No. 89-1538

In The

Supreme Court of the United States

October Term, 1989

RANDALL HANK WILLIAMS,

Petitioner,

vs.

CATHERINE YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

APPENDIX TO PETITION
VOLUME II

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IN THE SUPREME COURT OF ALABAMA

No. 87-269

CATHERINE YVONNE STONE,

Appellant,

vs.

GULF AMERICAN FIRE & CASUALTY COMPANY, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BRIEF AND ARGUMENT OF APPELLEE JONES, MURRAY AND STEWART

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STATEMENT OF THE CASE

This is an appeal from what began as an action for declaratory judgment that Cathy Stone has no right or entitlement to any proceeds of the Estate of Hank Williams, Sr. The complaint originally asks the court to adjudicate that Stone has never been adjudicated to be the child of Williams, Sr., that Stone was adopted and therefore barred by Title 26-17-6(e), 1975 Code of Alabama, from establishing paternity, that Stone is barred by laches waiver and estoppel from establishing paternity, and that previous court orders are binding on Stone and bar her from establishing paternity. The bill for declaratory judgment further asks that Randall Hank Williams, Jr. be established as the sole child of Williams, Sr. The original complaint was amended twice (C.R. 1, 13 and 135). Stone attempted to have the complaint dismissed by filing a motion to dismiss on the grounds there was no judicial controversy (C.R. 174). The motion was denied (C.R. 296). Stone filed a petition for mandamus with the Supreme Court of Alabama and on September 26, 1986 the mandamus was denied. See *Ex Parte Stone*, 502 So.2d 683 (Ala. 1986). Following these proceedings Stone then filed a third party complaint against the Estate of Robert Stewart which was dismissed with prejudice on Stone's own motion (C.R. 961). The third party complaint continued against the lawfirm of Jones, Murray and Stewart. The third party complaint was filed in October, 1986. Judge Kennedy, Circuit Judge in Montgomery County, Alabama,

ruled on the motion for summary judgment filed by Jones, Murray and Stewart on July 14, 1987. Judge Kennedy ruled that the motion of Jones, Murray and Stewart was well taken and dismissed the third party complaint against that lawfirm.

This appeal followed.

STATEMENT OF THE FACTS

The facts are set out in Judge Kennedy's July order styled "Final Order on Motions for Summary Judgment" (C.R. 1107). Jones, Murray and Stewart presents the following chronological review of the facts in hopes that it will aid the Court in understanding the history of the litigation. A review of facts and procedural history of the case is further set out in *Ex Parte Stone*, 502 So.2d 683 in an opinion rendered by Justice Adams.

Defendant/Third Party Plaintiff Catherine Yvonne Stone (herein referred to as "Stone") was born in Montgomery, Alabama on January 6, 1953 to Bobbie W. Jett. At brith, [sic] she was named Antha Belle Jett. Stone's mother left her with Mrs. Lillian Williams Stone shortly after her birth. (Austin Dep. of 7/86).

On or about January 28, 1953, Mrs. Lillian Williams Stone contacted the Montgomery County Department of Public Welfare relative to adopting Stone. An Interlocutory Order of Adoption granting temporary custody of Stone to William Wallace Stone and Lillian Williams Stone was issued on September 21, 1953, on which date the Montgomery County Department of Public Welfare began

supervision of Stone and her case. After continuing supervision by the said Department of Public Welfare, a Final Decree of Adoption was entered on December 23, 1954, establishing an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Stone. Stone's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. On or about April 22, 1955, pursuant to the petition of her adoptive father, William Wallace Stone, Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama.[1] (Austin Dep. of 7/86). Stone was placed in the home of Mrs. Ilda Mae Cook as a foster child.

Later, on February 21, 1956, preliminary to possible adoption, Stone was placed by the Alabama Department of Pensions and Security with George Wayne Deupree and Mary Louise Sims Deupree of Mobile, Alabama. (Austin Dep. of 11/86, Pl.). This was initially a foster home placement. Pursuant to a Petition for Adoption of Child filed by Mr. and Mrs. Deupree on December 23, 1957, an Interlocutory Order was entered by the Probate Court of Mobile County, Alabama on March 7, 1958, granting temporary custody of Stone to Mr. and Mrs. Deupree. On April 23, 1959, a Final Decree of Adoption was entered by the said Probate Court, establishing an

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[1] Since 1955, officials of the State of Alabama Department of Pensions and Security (Now Human Resources) have been aware of Stone's background, including claims that she might be the child of Hank Williams. (Austin Dep. of 11/86, p. 22-23; Pittman Dep., p. 12)

adoptive parent/child relationship between George Wayne Deupree and Mary Louise Sims Deupree and Stone. Stone's name was changed to Cathy Louise Deupree.

In 1967 proceedings were commenced in two (2) actions then pending before the Circuit Court for Montgomery County, Alabama. Mr. Stewart delivered to the Court the 1952 contract bewteen [sic] Williams, Sr. and Mrs. Jett. He had already given copies of the document to those people or their attorneys who might have been affected (Stewart testimony September, 1967, p. 74, R. p. 996). Audrey Mae Williams, the mother of Randall Hank Williams, filed a petition seeking a final settlement in the case entitled, "In the matter of the Estate of Hiriam 'Hank' Williams, Deceased," Case No. 25056 (the "Estate Proceeding"). Mrs. Williams and Randall Hank Williams filed a Petition Seeking to Vacate Decree of March 19, 1963 and for Order Requiring Guardian to Make Accounting and Transfer Assets in the case entitled "In the Matter of the Guardianship Estate of Randall Hank Williams, a Minor," Case No. 27960 (the "Guardianship Proceeding"). In her response to the petitions filed in each proceeding, the question of the existence and legal rights of Stone and any other unknown heirs of Hiriam Hank"Williams was raised by Mrs. Irene Smith, the Administratrix of the Estate and the Alabama Guardian of Randall Hank Williams. In each proceeding, the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interests of any minor person or persons who might have an interest in the matters involved in the proceedings. In furtherance of his appointment, the

Guardian Ad Litem fully participated in both proceedings, and vigorously sought to establish that Stone was the child of Williams and entitled to share in the estate.

Stone's second adoptive parents, Mr. and Mrs. Deupree, were aware of these proceedings through newspaper publicity and were notified of both proceedings by the Mobile County Department of Pensions and Security and the Alabama Department of Pensions and Security. They came to Montgomery and Mrs. Deupree talked with Drayton Hamilton, who tried to persuade her that it would be in Stone's best interest if she would pursue Stone's claim against Williams' estate. The Deuprees were not interested and "did not want her labeled as a bastard and illegitimate child of Hank Williams." (Deupree Dep. pp. 18-25).

On December 1, 1967, the Circuit Court of Montgomery County issued an order in the Estate Proceeding, finding and concluding that Stone had no right of inheritance from Hiriam "Hank" Williams and no right to receive any part of his estate. The Court went on to find that Randall Hank Williams was the sole heir and only distributee of the Estate of Hiriam "Hank" Williams.

On January 30, 1968, after lengthy evidentiary proceedings, the Circuit Court for Montgomery County, Alabama entered an order in the Guardianship Proceeding which, among other things, found and concluded that Stone was not an heir of Hiriam "Hank" Williams and had no rights in the copyrights in musical compositions written in whole or in part by Hiriam "Hank" Williams or in the rights to renew those copyrights. (R. p. 1076).

Neither the December 1, 1967 order in the Estate proceeding nor the January 30, 1968 order in the Guardianship Proceedings were appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Stone's adoptive parents, the Deuprees, being aware of the above orders, expressed a desire, through their attorney, that such orders not be appealed. The orders thereafter became final orders pursuant to applicable Alabama law.

From and after the death of Hiriam "Hank" Williams, Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest, accounted to and paid to the Estate of Hiriam "Hank" Williams, royalties arising from the usages of the songs composed by Hiriam "Hank" Williams. After the closing of the estate, and in reliance on the above orders of the Court in the Estate Proceeding and the Guardianship Proceeding, Fred Rose Music, Inc. and Milene Music, Inc. paid such royalties to Randall Hank Williams as the sole heir of the estate of his father. (Rose affidavit).

In 1963, Randall Hank Williams, at the time a minor, and Fred Rose Music, Inc. entered into a contract and agreement with regard to the renewal rights of copyright in all the musical compositions written and/or composed by Hiriam "Hank" Williams. The Court, in the Guardianship Proceeding, found that the contract entered into in 1963 was in the best interests of the ward, Randall Hank Williams, and further that Hiriam "Hank" Williams' sole heir and distributee, Randall Hank Williams, was the only heir having an interest in the renewal rights for the copyrighted musical compositions and works of Hiriam "Hank" Williams.

Since the final orders of the Court in the Estate Proceeding and the Guardianship Proceeding, all parties have relied on those orders in the conduct of their business relative to the copyrights and estate of Hiriam "Hank" Williams, believing and proceeding on the basis that the Court's orders finally and unequivocally established that Stone had no rights in or to the copyrights and the estate. (Rose affidavit).

On or about November 12, 1968, Stone's adoptive father, George Wayne Deupree, contacted the Alabama Department of Pensions and Securities and was adivsed [sic] that Stone's natural mother's name was Bobbie Webb Jett and was reminded that Stone had been previously adopted by her alleged grandmother. (Austin Dep. of 11/86, Pl. Ex. 4-7 through 4-10; Pittman Dep., p. 18).

In or about January, 1974, in connection with Stone reaching the age of majority, Stone's adoptive mother, Mrs. Deupree, visited Stone at the University of Alabama. *During this visit, Mrs. Deupree told Stone that Hank Williams was Stone's biological father.*[2] (Deupree Dep., pp. 30-32). Mrs. Deupree also advised Stone that the Circuit Court of Montgomery County was holding certain funds for her

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[2] Mrs. Deupree testified that she had known since 1967 that Stone was the daughter of Hank Williams, having been so advised by Mrs. Pittman at the Department of Pensions & Security (Deupree Dep., pp. 19, 27) and by Drayton Hamilton (Deupree Dep., pp. 20, 27). Mrs. Deupree did not want Stone labelled as an "illegitimate child of Hank Williams" (Deupree Dep., p. 22), but decided in 1974, when Stone turned twenty-one, to tell Stone about Stone's relationship to Hank Williams (Deupree Dep., pp. 29-32). At the same time, Mrs. Deupree told Stone about the 1967 court proceedings (Deupree Dep., p. 33).

from the estate of Lillian Williams Stone (Deupree Dep., p. 29). On or about January 10, 1974, Stone drove to Montgomery and picked up a check from the Circuit Court in an amount in excess of $2,000.00. (Deupree Dep., pp. 10-11, 29-33; Stone Sep. [sic] pp. 75-78). In the year following such conversation, and the receipt of the Lillian Williams Stone estate funds, Stone read a book on the life of Hank Williams entitled *Sing A Sad Song*. (Stone Dep., pp. 108-109). The book contains specific reference to the Estate Proceeding, the Guardianship Proceeding, an illegitimate child allegedly fathered by Hiriam "Hank" Williams who had been adopted, and the names of other individuals who were significant in the life of Hiriam "Hank" Williams.

Extensive newspaper articles and oter [sic] media coverage exist revealing the substance of the Estate Proceeding and the Guardianship Proceeding, including the existence of the written contract[3] executed by Hiriam "Hank" Williams mentioning a child born to a woman in Montgomery, Alabama. (Austin Dep. of 11/86; Pl. Ex. 3-5 to 3-9). Other articles published about the life and death of Hiriam "Hank" Williams, gave significant information relative thereto and naming significant individuals with knowledge thereof. Such media coverage and newspaper articles are, and since their inception have been, a matter

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[3] Although Stone's attorney, Keith Adkinson, went through the pretense of petitioning the Circuit Court for an order permitting Stone to retrieve this contract from sealed court files, he later admitted he had the document all along, having earlier "surreptitiously" obtained it from courthouse files. (Adkinson Dep., pp. 360-409).

of public record which Stone could have examined at any time.

On or before August 25, 1976, Stone told Nicholas T. Braswell, III that someone had told her that they thought Stone was the daughter of Hiriam "Hank" Williams. Subsequent to such conversation, Mr. Braswell contacted Judge Richard P. Emmet (a Hank Williams aficionado and the judge who presided over the Estate Proceeding and the Guardianship Proceeding) on Stone's behalf; and on or about August 20, 1976, Braswell telephoned Stone and advised Stone that Judge Emmet would like to see, or was interested in seeing, her. (Braswell Dep., p. 5-12). Stone did not contact Judge Emmet prior to his leaving the bench in 1978. (Stone Dep., pp. 192-193).

On October 17, 1979, Stone had a meeting with Ms. Emogene Austin of the Alabama Department of Pensions and Securities. Stone advised Ms. Austin that Stone knew her identity and that Stone had been to the Archives and had read newspaper clippings about Hiriam "Hank" Williams and that Stone knew that there had been mention of her in the newspapers at the time of the Estate Proceeding and the Guardianship Proceeding. According to Austin, Stone stated at that time that she did not "want anyone to ever link her with (her) alleged father." Ms. Austin reported at the time that the apparent purpose for Stone's meeting was to verify what she *already knew* and to gain assurance that the record of her adoption and alleged parentage was not accessible to others. (Austin Dep. of 11/86, pp. 25-34; Pl. Ex. 5-40, 5-41).

On or before December 1, 1980, Stone contacted and was contacted by Ms. Mary Lee Stapp, and Ms. Louise

Pittman, representatives of the Alabama Department of Pensions and Securities and was told that her original given name was Antha Belle and how to obtain her original Certificate of Birth, which Stone subsequently obtained on or before March 26, 1981. (Austin Dep. of 11/86; Pl. Ex. 5-41-43).

On or before December, 1980, Stone's adoptive father, George Wayne Deupree, telephoned and told Stone the names of individuals who participated in her adoption process and the Estate Proceeding and Guardianship Proceeding. On December 4, 1980, Mr. Deupree sent Stone a legal document relative to the above and newspaper clippings relative to the Estate Proceeding and Guardianship Proceeding. (Stone Dep., pp. 80-82).

The pleadings, briefs and orders of the Estate Proceeding and the Guardianship Proceeding are, and since their inception have been, a matter of public record which Stone could have examined at any time, but which Stone did not attempt to examine until after December, 1980.

Stone filed the original action herein against Dr. Forrest Ludden, et al. on July 1, 1985. On August 5, 1985, Stone's attorneys wrote to Hank Williams, Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights and advising, "We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father." On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged interest in the renewal rights in the copyrights of musical compositions written in whole or in

part by Hiriam "Hank" Williams. On or about November 14, 1985, Plaintiffs filed the Second Amended Complaint in this action. After various motions and appeals were exhausted, Stone filed her third party complaint in this action on or about October 24, 1986.

ISSUES PRESENTED FOR REVIEW

I.

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR JONES, MURRAY AND STEWART WHEN THE EVIDENCE IS BEYOND CONTRADICTION THAT MR. STEWART DID NOT BREACH ANY DUTY TO THIRD PARTY PLAINTIFF.

II.

HAS THE STATUTE OF LIMITATIONS RUN ON THIRD PARTY PLAINTIFF'S FRAUD COUNTS FILED OCTOBER 24, 1986 WHERE THE UNDISPUTED EVIDENCE SHOWS THIRD PARTY PLAINTIFF KNEW FACTS THAT WOULD HAVE LED TO THE DISCOVERY OF THE ALLEGED FRAUD AS FAR BACK AS AT LEAST 1974 AND WHERE HER RIGHTS HAD BEEN FULLY DETERMINED IN 1967.

ARGUMENT

This is an appeal from the grant of a motion for summary judgment dismissing a so called third party complaint against Jones, Murray and Stewart and others. The basis of the claim against Stewart, and consequently his lawfirm, was that Stewart committed fraud against

Cathy Stone in 1953 through 1967. The Court granted Jones, Murray and Stewart's motion on July 14, 1987 after which the lawfirm had nothing further to do with the case. After hearing on September 2, 1987 the Court rendered its final order on October 26, 1987 holding that Hank Williams, Jr. was not in fact the only natural child of Williams, Sr. and that Catherine Yvonne Stone was also a natrual [sic] child of Hank Williams, Sr. There is no appeal from the finding that Stone is and was never entitled to inherit from the Williams estate. This appeal is from the grant of summary judgment dismissing the third party complaint. The finding and holding that Stone is not and was never entitled to inherit from the Williams estate is the law of the case and was not appealed by Stone. Consequently, that fact is accepted and it is unnecessary to brief the reasons that she was not ever and is not now entitled to inherit from the Williams estate.

The function of a third party complaint is not to provide a mechanism to file a tort claim against a non-party to the original complaint. However, that is exactly what was done here. The third party complaint, by Stone's own admissions, is a fraud case against the lawfirm seeking damages. The third party complaint alleges fraud on the part of partner, Stewart, now deceased, and conspiracy to commit fraud between Smith, American States and Stewart plus an allegation of confidential special or fiduciary relationship on the part of Smith, Stewart and American States. The so called third party complaint is merely a three count complaint, not based on an indemnity theory but based on fraud. Rule 14, ARCP permits an action to bring in a party who is or may be liable

to defendant for all or part of plaintiff's claim. The complaint as amended never sought money damages. The third party complaint does seek money. It does not seek indemnity as third party practice is designed but is merely a tort count for fraud.

This Court has specifically ruled on the function of third party practice. In the case of *Quality Homes Company v. Sears, Roebuck and Company,* 496 So.2d 1 (Ala. 1986), this Court holds that the third party practice is used only in the event that the third party defendant is or may be liable for all or part of the plaintiff's claim against defendant. The third party practice is not a vehicle for contributions among joint tort-feasors nor as a vehicle for tendering of a defendant which plaintiff has elected not to sue.

The case in chief here does not seek damages. The so called third party action seeks damages for fraud. The proper method to attack this misuse is by motion to dismiss. See *Quality Homes Company v. Sears, Roebuck and Company, supra.*

An analysis of the third party complaint reveals that it is an attempt to sue the third party defendants on a tort theory, not based on indemnity if Defendant Stone were liable to Plaintiff but on a different cause of action – the tort of fraud. The so called third party action is a claim for damages in the amount of $10,000,000.00 for fraud – separate and apart from any relief sought in the original or amended complaints. The third party complaint was properly dismissed by Judge Kennedy.

Appellants' argument makes the bold and untrue statement that third party defendants intentionally and

willfully concealed from the Montgomery County Courts a child who was known to be the natural daughter of Williams, Sr. That statement overlooks the fact that Mr. Stewart told the guardian ad litem, Mr. Hamilton, about Stone and the agreement between Williams, Sr. and Ms. Jett as far back as 1967 so that the issue could be fully litigated. He could not have been more open. Appellants overlook that Mr. Stewart knew nothing about the whereabouts of Stone during the period of time that he is supposed to conceal facts from her.

In dismissing the Stone claim against the third party defendant Jones, Murray and Stewart, Judge Kennedy stated that he deemed it unreasonable to impose upon Stewart the duty to anticipate or foresee what the law should or might become in the future. Judge Kennedy noted that full disclosure to the court or to interested third parties would have been superfluous. Even so, there was full disclosure on Mr. Stewart's part as far back as 1967 when he told Stone's guardian ad litem all he knew about Stone and the agreement between Williams, Sr. and Jett.

Judge Kennedy holds that Stone was not an heir and entitled to inherit. No appeal was taken from that finding. Alabama law is clear that a minor represented by a guardian ad litem is bound by prior judgments in the same manner as any other party. See *Irwin v. Alabama Fuel & Iron Co.*, 215 Ala. 328, 110 So. 566 (1925). An unappealed adverse judgment is res judicata even under circumstances where the judgment is wrong or rested on a legal principal subsequently overruled in another case. See *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 69 L.Ed.2d 103, 191, 101 S.Ct. 2424 (1981) and 46 AmJur

2d Judgments, Section 461 and 50 CJS Judgments, Section 699. In this case, it cannot be argued that Mr. Stewart had any control over whether the guardian ad litem appealed or not. He made disclosure as far back as at least 1967 and Stone's rights were fully litigated. It is clear that the 1967 proceedings in the Circuit Court of Montgomery County involved the question of whether Stone was an heir and entitled to share in the Williams estate. Her guardian ad litem raised this claim and prosecuted this argument. The Court held she was not a child within the meaning of the intestacy laws and not entitled to share in the estate. What then was Mr. Stewart to do? He is accused of fraud for not doing what was done by the guardian ad litem after full disclosure from the very target of Stone's claim of fraud – Mr. Stewart. The 1967 proceedings addressed and decided the issue of whether Stone was an heir of the Williams estate. There is undisputed evidence that in January, 1974, Mrs. Deupree told Stone she was the child of Hank Williams and she had some money coming to her from William, Sr.'s mother. She picked up the money. She read a book about the court orders and significant individuals who provided much information about the additional child of Hank Williams. She was an adult at that time. In 1976 she came to Montgomery and discussed this with Nick Braswell, an attorney. In 1979 she went to the Department of Pensions and Security and talked to Mrs. Emogene Austin and advised Mrs. Austin that she was aware that she was the child of Hank Williams but that she did not "want anyone to ever link her with (her) alleged father." Notwithstanding all this knowledge and the fact that she was aware of the facts, she did not attempt to bring Mr. Stewart into

the picture until October, 1986. She ignored her rights and even as late as 1979 stated that she did not wish to pursue the matter. There were numerous opportunities to uncover more facts. All the court records were matters of public record. She had every opportunity to pursue her claim of fraud against Mr. Stewart but chose not to do so until 1986. In fact, she even took the position that she wanted to keep her identity secret. Since 1974 when even Stone acknowledges that she had actual knowledge of her possible claim to the estate, numerous individuals with important input had died including her biological mother, Bobbie W. Jett, Hank Williams, Jr.'s mother, Audrey Mae Williams, Stone's adoptive father, Mr. George Deupree, and most importantly, Bob Stewart, the target of the purported fraud. Mr. Stewart is unable to tell his story as an alleged active participant in this fraud.

Not only have witnesses died, but others have had their memories dimmed by the passage of some 20 to 30 years. Unquestionably more than 30 years has passed since the events of some of these alleged frauds took place.

This case is perfect for the Court to note that there comes a time when antiquated claims will not be considered by the Court. In *Barrett and Tomjack v. Wedgeworth, as Administrator*, 22 ABR 600 (85-795 and 85-796) this Court stated:

> "As a matter of public policy, and for the repose of society, it has long been the settled policy of this state, as of others, that antiquated demands will not be considered by the courts, and that, without regard to any statute of limitations, there must be a time beyond which human transactions will not be inquired into. . . . The

> consensus of opinion in the present day is that such presumption is conclusive, and the period of 20 years . . . [is] a complete bar; and, as said in an early case, 'the presumption rests not only on the want of diligence in asserting rights, but on the higher ground that it is necessary to suppress frauds, to avoid long dormant claims, which, it has been said, have often more of cruelty than of justice in them, that it conduces to peace of society and the happiness of families, "and relieves the courts from the necessity of adjudicating rights so obscured by the lapse of time and the accidents of life that the attainment of truth and justice is next to impossible." ' " *Harrison v. Heflin*, 54 Ala. 552, 564 (1875).

The purpose of the rule of repose is "to prevent inquiry into claims, such as this, where the evidence is obscured by the passage of time and deaths of necessary witnesses." See *Barrett and Tomjack, supra.*

A review of the development of the law over the years is unnecessary to this appeal because the finding that Stone was not an heir and not entitled to share in the estate of Williams, Sr. is not subject to review, there having been no appeal taken from that holding. Therefore, the illegitimate child, Stone, was not as a matter of law, an heir or potential heir under the law of Alabama in 1953 and 1967. Accordingly, Mr. Stewart had no duty or obligation to acquaint the court with the child's existance nor to provide information regarding the child because the child simply was not, and could not have been, determined to be an heir under the then existing law and facts. To say otherwise would be to require under penalty of fraud, that the attorney for the estate anticipate changes in the law which did not occur until some twenty-five

years later. That is to say, that in order to be free from fraud claims, the attorney would have to predict that some day the Alabama Supreme Court or Legislature would change the law and permit judicial determination of paternity for inheritance purposes and would have had to insist that such a determination be made just in case it ever did become important. To state that such a failure is fraud is going far beyond the duty of good faith as referred to in Judge Kennedy's order. The duty of Mr. Stewart was to act in good faith according to the law of the State of Alabama as it existed at that time, not to anticipate and engage in conjecture on what might become the law in the future. Even if Mr. Stewart had advised the court in 1953 that there may be an illegitimate child, it must be assumed that the court would follow clearly established law that existed at that time. The court would have undoubtedly held that Stone, being illegitimate and not legitimated, was not an heir and could not inherit from the Williams estate. The question of biological parentage was irrelevant because *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929) makes it clear that such was irrelevant at that time. Nothing would change. The holding that she was not an heir is not even raised in this appeal and is a final order of the court.

For purposes of analyzing the alleged fraud on the court, the court should look to the law as it existed at the time the alleged disclosure should have been made about what should be disclosed. It would be totally inappropriate to apply any other law and say that Mr. Stewart should have followed laws that did not come into existance for another twenty-five years. Mr. Stewart committed no fraud in 1953 nor thereafter as Judge Kennedy

holds "full disclosure to the court or to interested third parties would have been superfluous".

The Court will note that in this case, going far beyond the duty of good faith, Mr. Stewart did, in *1967*, advise Mr. Drayton Hamilton, Stone's attorney, that there was a possibility of Stone having rights under the estate and he, Hamilton, did seek a judicial declaration of paternity. The issue was before the Court. The Court decided the then-existing law in holding she could not inherit. Regardless of her biological parentage, Stone could not inherit. This is clear from Judge Emmet's order. That is the law of the case.

Appellant cites cases in brief where persons who had inheritance rights were prevented from asserting those rights. The unappealed finding and holding of the Circuit Courts of Montgomery County is that Stone had no inheritance rights. The cases cited are not analogous and appropriate in this instance. There is no fraud on the courts jurisdiction nor any suppression of a known heir.

It is clear that Stone has sat on her rights. She is barred from her fraud case by the statute of limitations. Her cause of action arose when she discovered the alleged fraud *or* upon closer examination would have led to the discovery of the fraud. See *Papastefan v. B & L Construction Co. of Mobile*, 385 So.2d 966 (Ala. 1980). The undisputed testimony discloses that she was told in 1974 that she was Williams, Sr.'s daughter. She did nothing to pursue Mr. Stewart. In 1979 she knew her identity. She discussed this with Mrs. Emogene Austin to verify what she *already knew* and gained assurance that the record of her adoption and alleged parentage was not accessible to

others (Austin Dep. of 11/86 p. 25-34). In 1980 she contacted and was contacted by Mrs. Stapp and Mrs. Pittman who told her that her original given name was Antha Belle and how to obtain her birth certificate which she did obtain on or before March 26, 1981. Again on or before December, 1980, her adoptive father told her the names of individuals who participated in her adoption process and estate and guardianship proceedings. She examined the records sometime after December, 1980. It was not until October 24, 1986 that Stone claimed fraud on Mr. Stewart's part.

In *Parsons Steel, Inc. v. Beasley & Wilson*, released March 4, 1988, this Court held that the party bringing a fraud action has the burden to prove that he comes within the saving clause of the Code of Alabama, 1975, Section 6-2-3. This Court stated:

> "Under that section, the claim for fraud is considered as having accrued at the time of 'the discovery by the aggrieved party of the fact constituting the fraud.' Following that discovery, that party has one year [now two years] within which to file his action. This Court has held that fraud is 'discovered' when it ought to or should have been discovered. *Moulder v. Chambers*, 390 So.2d 1044 (Ala. 1980); *Jefferson Co. Truck Growers Ass'n v. Tanner*, 341 So.2d 485 (Ala. 1977). Thus, the time of 'discovery' is the time at which the party actually discovered the fraud, or had facts which, upon closer examination, would have led to the discovery of the fraud. *Papastefan v. B & L Construction Co., Inc. of Mobile*, 385 So.2d 966 (Ala. 1980)."

Stone did nothing to even attempt to involve Mr. Stewart until October 24, 1986 some thirty-two years after

her claim of alleged fraud. She waited until Mr. Stewart was dead and buried until she ever made any hint that he had defrauded her.

Summary

The order appealed from is correct and is due to be affirmed.

CONCLUSION

The Trial Court was correct in granting summary judgment against Stone in this third party complaint and should be affirmed.

Respectfully submitted,

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ROBERT C. BLACK

APPENDIX G-4

IN THE SUPREME COURT OF ALABAMA

CASE NUMBER 87-269

CATHERINE YVONNE STONE,

Third Party Plaintiff/Appellant,

v.

GULF AMERICAN FIRE & CASUALTY COMPANY;
AMERICAN STATES INSURANCE COMPANY;
JONES, MURRAY & STEWART, P.C.;
and IRENE SMITH,

Third Party Defendants/Appellees.

ON APPEAL FROM THE CIRCUIT
COURT OF MONTGOMERY COUNTY

CIRCUIT CASE NUMBER: CV 87-1316

BRIEF OF APPELLEE, IRENE SMITH

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ISSUE PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT PROPERLY GRANTED THE MOTION OF THIRD PARTY DEFENDANT SMITH FOR SUMMARY JUDGMENT IN HER FAVOR WHERE THERE WAS NO EVIDENCE OF FRAUD.

Wheeler v. First Alabama Bank of Birmingham
364 So.2d 1190, 1199
(Ala. 1978).

United States v. Olin Corp.
606 F.Supp. 1301
(N.D. Ala. 1985)

Birmingham Realty Co. v. General Service
497 F.Supp. 1377, 1390
(N.D. Ala. 1980)

E.E.O.C. v. Dresser Industries. Inc.
688 F.2d 1199, 1203
(11th Cir. 1982)

Smith v. Norman
495 So.2d 563
20 ABR 3058, 3060
(Ala. 1986).

Allen & Co. v. Occidental Petroleum Corp.
382 F.Supp. 1052
(S.D.N.Y 1974)

STATEMENT REGARDING ORAL ARGUMENT

Irene Smith, Appellee, sees no need for oral argument on these issues.

STATEMENT OF THE CASE

This matter comes before the Court after an appeal by Cathérine Yvonne Stone (hereinafter "Stone") from a decision by the circuit court of Montgomery County, granting summary judgment in favor of certain alleged third party defendants including Irene Smith (hereinafter "Smith").

The action which resulted in this appeal originally started by the filing of a declaratory judgment action by Randall Hank Williams and others now referred to as the "Williams Group". Following that complaint, an answer and counterclaim was filed by the now Appellant, Stone. At or near the time of the filing of this counterclaim by Stone, a third party complaint was initiated against

Smith, Gulf American Fire and Casualty Company (hereinafter "Gulf American"), American States Insurance Company (hereinafter "American States"), Jones, Murray & Stewart, P.C., and the estate of Robert B. Stewart. This third party complaint apparently alleged an intentional and willful concealment by the third party defendants of Stone's identity. It is further alleged that there was a conspiracy on the part of certain third party defendants to defraud the court and Stone as to matters pertaining to Stone's identity and rights.

As indicated above, summary judgment was granted in favor of all third party defendants and the original movants for declaratory judgment (in part). Evidence concerning the question of declaration that Randall Hank Williams was the sole heir of Hiriam Hank Williams was heard by the court on August 25, 1987.

This brief is filed on behalf of third party defendant, now Appellee, Smith.

STATEMENT OF THE FACTS

The pertinent facts in this case, as decided by the court below, indicate that on October 15, 1952, Hiriam Hank Williams and Bobbie W. Jett entered into an agreement pertaining to the custody and support of an unborn child being carried by Jett. That agreement was prepared by Robert B. Stewart, an attorney in Montgomery, Alabama, and was executed by the principals. This agreement provided that Hiriam Hank Williams would make certain provisions concerning the care and needs of Ms. Jett and the unborn child.

On January 1, 1953, Hiriam Hank Williams died intestate.

Letters of administration for Williams' estate were filed in probate court of Montgomery County, in January, 1953. On January 6, 1953, Jett gave birth to a child named Antha Bell Jett, and by agreement, said child was left in the care of the mother of Hiriam Hank Williams, known as Lillian Stone. Stone thereafter adopted Antha Bell Jett and the order of adoption granting custody to her was issued on September 21, 1953. Final decree of adoption was issued on December 23, 1954, and such created the parent-child relationship with the child's name being changed to Catherine Yvonne Stone.

After the death of Lillian Williams Stone, the child was placed in several foster home situations which ultimately resulted in her second adoption, this time by George and Mary Deupree of Mobile. The child's name was then changed to Cathy Louise Deupree.

In 1967 and 1968, while the child (Stone) lived in Mobile with her adopted parents, these parents had conversations with Drayton Hamilton, a Montgomery attorney, who had been appointed guardian ad litum in proceedings dealing with the estate of Hiriam Hank Williams. After these conversations and notice of the proceedings, the Deuprees apparently indicated they had no interest in the outcome of these proceedings and apparently indicated their child had no interest.

A trial resulted from these proceedings which resulted in an attack by the guardian ad litum on the constitutionality of existing statutory law concerning legitimation and an argument that Stone was a legitimate

daughter of Hiriam Hank Williams. While apparently not ruling that Stone was a child of Hiriam Hank Williams, the court did rule that the child in question did not have any right of inheritance from the estate of Hiriam Hank Williams and that Randall Williams was the sole heir of that estate.

Similarly, in January of 1968, the circuit court of Montgomery County ruled that Stone (the child born to Bobbie W. Jett) was not an heir of the late Hiriam Hank Williams. Neither the order of December 1, 1967, from the estate proceedings nor the order of January 30, 1968, from the circuit court were appealed.

In January of 1974, Stone reached the age of majority, was attending the University of Alabama, was informed that Hiriam Hank Williams might be her father, and collected certain funds from the estate of Lillian Stone. Through the years from 1974 to 1980, Stone apparently continued to have indication pertaining to the question of her natural father. It was not until July 1, 1985, that any action was filed in the circuit court of Montgomery County, Alabama, by Stone. This action was not instigated by Stone but rather by the plaintiffs in order to obtain declaratory judgment relief.

ARGUMENT

THE TRIAL COURT PROPERLY GRANTED THE MOTION OF THIRD PARTY DEFENDANT SMITH FOR SUMMARY JUDGMENT IN HER FAVOR WHERE THERE WAS NO EVIDENCE OF FRAUD.

Appellee Smith contends that there are numerous reasons why the decision by the circuit court below in

granting the motion for summary judgment should be upheld. This decision by the court was correct and proper for many reasons not the least of which were the ones stated by the court in its decision of July 14, 1987. Smith will address these contentions in the brief that follows and will also address those two allegations of the Appellant found in her brief.

A. STONE WAS NOT A LAWFUL HEIR OF HIRIAM HANK WILLIAMS AND DID NOT STAND AS A BENEFICIARY TO THAT ESTATE.

If there is one point of law that is absolutely clear in this cause, it is that Stone was not an heir to the estate of her alleged biological father, Hiriam Hank Williams (hereinafter "Williams, Sr."). This determination was made after a full hearing on the matter, wherein Stone was represented by counsel Drayton Hamilton, in an order first issued on December 1, 1967. A similar determination was made by the circuit court of Montgomery, Alabama, in a separate proceeding concerning guardianship of the estate in an order dated January 30, 1968. It is clear that when this issue is judged under the law applicable at the time of Stone's birth or the law at present, the result is the same. Stone was not and is not a lawful heir to Williams, Sr.'s estate.

It is clear that if Stone is the natural child of Williams, Sr., she was born illegitimate, and thereafter, was twice adopted by separate parents. As is clear by this record, the determination of the court in this case and previous cases, and the briefs presented, there are presently four ways to legitimate a child so that it can inherit from its natural father who dies intestate. Because two of

those methods require either the marriage of the mother and father and formal written declaration by the father acknowledging his child, they are not discussed herein (there is no evidence that Williams, Sr., and Ms. Jett were ever married and this fact is not in dispute). The remaining two alternatives which were considered by the court below also defeat any claim of inheritance by Stone. One of these alternatives relates to the Alabama Uniform Parentage Act of *Code of Alabama*, 1975, Section 26-12-1 et seq. That statute clearly indicates that a subsequently adopted child may not bring an action to establish paternity under this act. The remaining alternative is also foreclosed by the fact that the Alabama Probate Code (See Section 43-8-48, supra.) provides that the subsequent adoption of a child makes that child that of the adopting parents and not of the natural parents.

Similarly, the circumstances of the death of Williams, Sr., and the subsequent birth of Stone indicate that Alabama law in 1952 would be of no benefit to Stone in any attempt to establish herself as a lawful heir.

These matters were correctly decided by the court in late 1967 and early 1968. The court at that time correctly decided those issues and the court below correctly found that those issues should not be relitigated. Any decision to the contrary would have been inconsistent with Alabama law concerning res judicata. Where there has been a previous judgment by a competent court of jurisdiction and a decision rendered on the merits involving the same parties, res judicata is an appropriate defense. *Wheeler v. First Alabama Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala. 1978). There can be little doubt that the circumstances of this case clearly give rise to a finding that the

defense of res judicata is appropriate. Similarly, Stone is collaterally estopped from submitting these same issues for redetermination. *Wheeler*, supra. The trial court correctly applied these principles in barring Stone's claim made chiefly against the original plaintiffs.

It should also be remembered that the determination by the court below that Stone was not a lawful heir was not appealed and thus has "again" become final.

B. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS, SR., ARE NOT UNDER A DUTY TO DISCLOSE FACTS WHICH ARE OF NO RELEVANCE. SMITH WAS NOT SHOWN TO HAVE FAILED TO HAVE DISCLOSED ANY MATERIAL FACT RELATED TO STONE.

This matter is one presented by Stone in brief and is placed in this position herein because of its relationship to the argument expressed above. It is the position of Smith that she can be under no duty as an administrator or otherwise to disclose a fact that is of no materiality. The clear, undisputed fact that Stone cannot and could not inherit from the Williams estate either now, in 1953, or in 1967, seems to have alleviated any burden upon Smith to disclose the existence of Stone. To argue that Smith should have made such a disclosure of an immaterial irrelevant fact is to ignore the very definition of fraud. Throughout the first argument of Stone in brief, numerous allegations are made concerning the duties of administrators to the estate. Many, if not all, of those contentions and case citations deal with the duty of one to disclose the existence of known or potential heirs or claimants to an estate. While this argument is made over

and over by Stone in brief, it ignores the above indicated fact that Stone was not an heir nor a potential claimant. What Stone now asks of this Court would have required Smith and others to disclose facts (the existence of Stone) which were of no consequence. This is not a matter of individuals ("in many cases a non-lawyer") making a judicial determination as Stone suggests. To have required Smith to make this disclosure (and conclude that the failure of such constitutes fraud), would have similarly required Smith to disclose the existence of every individual regardless of their relationship to Williams, Sr., or the estate. Smith was not required to tell the court about the existence of Stone any more than she would have been required to have reported the existence of some unrelated neighbor, friend, etc., of Williams, Sr. These fictitional [sic] people (of this example) would stand in the same position as Smith as they were by law neither heirs nor claimants to the estate.

None of the arguments expressed by Stone in brief are of any significance given the adverse adjudication to her. An administrator or any fiduciary would not appear to be required to disclose irrelevant and immaterial facts. As much as Stone would argue to the contrary, it appears that since she had no claim to the estate, as a matter of law, her existence was of no significance. If there had been anything that Stone could have done to change the circumstances either in 1953, 1967, or presently, perhaps this argument would be different. Ms. Stone could not change the circumstances of her birth, Williams' death, nor her two subsequent adoptions. Because of these circumstances, Smith should not be held to a duty to disclose the existence of Stone. There is no showing that

Smith failed to act in good faith and there is no showing that "full disclosure" as argued by Stone would have made any difference. There exists no cause of action against Smith on this basis.

Smith would also point out that by making this argument, she does not admit to any failure of disclosure concerning the existence of Stone. Stone's brief before this Court, in places, submits that Smith knew of Stone's existence because of certain letters she had written. In other places, it is submitted by Stone that Smith failed to make such a disclosure. This portion of Stone's argument is at best inconsistent.

C. STONE PRESENTED NO EVIDENCE THAT SMITH COMMITTED ANY FRAUD ON THE COURT.

Although this issue is phrased by Stone in her brief under a separate heading, it does not appear to be any different in substance from her initial issue. The same argument made in response to her first issue (See Section "B" above) is applicable. Whether this Court uses the definition of extrinsic fraud or intrinsic fraud appears to make no difference in this case. There simply can be no fraud in failing to disclose a matter which is insignificant in the proceedings.

Although not referenced in "B" above, it should be noted that the argument of Stone in brief is entirely inconsistent with the findings of the Montgomery Circuit Court in 1967 and 1968 and with the unappealed decision of Judge Kennedy below. Those decisions clearly indicate that a new determination of Stone's status as an heir is barred by the doctrine of res judicata. By definition (and

by the facts of the 1967-68 decisions), the parties to the present action must have been parties to prior actions. Stone was represented at the time of the 1967-68 proceedings by Drayton Hamilton and it is totally inconsistent to claim that her existence was not disclosed to the court. Again, had there been any basis for relief as claimed by Stone, her interests would have been protected by counsel at that time. A guardian ad litum was appointed apparently each and every year to represent interests of unknown potential heirs. Had Stone been such an heir, it is clear that her interests would have been protected.

D. OTHER REASONS WHY SUMMARY JUDGMENT IN SMITH'S FAVOR WAS APPROPRIATE.

Although the court below did not necessarily rely upon other grounds for support of its July 14, 1987, ruling, it appears clear that other grounds exist. These were asserted below and will continue to be asserted before this Court.

Stone's claims are barred by the equitable doctrine of laches. Stone is seeking equitable relief and, therefore, her complaint is subject to the defense of laches. Laches is a purely equitable doctrine by which such relief may be denied to one who has been guilty of unconscionable delay in seeking the relief. *United States v. Olin Corp.*, 606 F.Supp. 1301 (N.D. Ala. 1985); *Multer v. Multer*, 195 So.2d 105, 108 (Ala. 1966). Smith submits that such precluded Stone from bringing all of these claims.

There can be little doubt that there was a significant delay in bringing this action by Stone. It is equally clear

that this delay was not excusable and that undue prejudice resulted to Smith because of this delay. These facts were sufficient by themselves to warrant the dismissal of the action because of the doctrine of laches. *Birmingham Realty Co. v. General Service*, 497 F.Supp. 1377, 1390 (N.D. Ala. 1980).

All of the evidence indicates that Stone knew of her possible rights at least as early as 1974. (There is clear evidence that she may well have known prior to then and it is undisputed that her adoptive parents and previous legal guardians knew of this possibility as early as 1967). Even with this information, Stone failed to take any action until 1986. To this date, Stone has provided no explanation for this delay. It is submitted that no explanation can be given by Stone as there is no reasonable excuse for such a delay. Thus, laches is an appropriate defense.

It should also be noted that Smith would suffer from this deliberate delay of Stone in bringing this suit. Obviously, there are numerous witnesses who would have been available previously who are not now living. These include relatives, other administrators of the estate, foster parents and other legal guardians, all of whom are now deceased and all of whom could have provided significant testimony concerning the issues raised. It is entirely possible that Smith now might not be able to prove all of her available defenses to this action because of the unavailability of these witnesses. This is a significant factor in determining the prejudice element of the laches defense. *E.E.O.C. v. Dresser Industries, Inc.*, 688 F.2d 1199, 1203 (11th Cir. 1982).

All of these factors and the cases cited above indicate that Smith was entitled to judgment in her favor because of the doctrine of laches.

Equally available to Smith to support her position that the judgment below is proper is the doctrine of equitable estoppel and waiver. Because the record indicates that the adoptive parents of Stone had knowledge of her potential rights, she should now be estopped from asserting her claim. It should be noted that this knowledge can be imputed to those adoptive parents as early as 1968. Those parents deliberately bypassed the opportunity to appeal the decision of the Montgomery County Court and apparently did so because they thought such to be in the best interest of Stone. These parents felt that the added burden of public knowledge that Stone was (or might be) the bastard child of Hiriam "Hank" Williams outweighed any benefit that might have resulted from further legal pursuit of the matter. They allowed Stone the benefit of protection from this public scrutiny and did so knowing of the obvious consequences. Having received that benefit, Stone should not now complain. Regardless of the motives of the adoptive parents, it remains true that Stone, herself, apparently chose the same benefit since she delayed any action herself for almost ten years after learning of the possible claim.

In addition, it is clear that Smith has in effect relied upon the long established silence on the part of Stone and her adoptive parents. A great deal of time has passed since the adoptive parents first learned of this information, and Stone has also had this knowledge for at least ten years. Smith, during that time, has moved from the State of Alabama, has pursued other business ventures,

and has left behind this portion of her life. She had a right to assume that this matter was closed and had no reason to stay actively involved with the estate. She relied on Stone's failure to assert these claims in a timely manner. Smith should not now be called upon to defend this action given this unreasonable delay. To have required her to defend this action now would result in material prejudice to her.

The above provides strong support for Smith's claim that the doctrine of estoppel is also a ground supporting the judgment below. All three elements of that doctrine are present here. *Smith v. Norman*, 495 So.2d 563, 20 ABR 3058, 3060 (Ala. 1986).

Similarly, these same facts support Smith's claim on the defense of waiver. Stone was aware of these possible claims, knew of the previous judicial determination and even stated publicly that she might have such a claim. However, she still chose to sit silent and take no action to enforce or assert these possible claims. This evidences an intentional waiver because of her chosen course of conduct and this Court can presume assent to the adverse right and waiver of the right now sought to be enforced. *Allen & Co. v. Occidental Petroleum Corp.*, 382 F.Supp. 1052 (S.D.N.Y 1974). Judge Kennedy's ruling below is supported also by these separate doctrines of waiver and equitable estoppel.

In addition to the above, Smith would also assert that the complaint against her was due to be dismissed because it was not a proper third party complaint under Rule 14 of the Alabama Rules of Civil Procedure. The allegations of fraud against Smith by Stone are not such

that they can be made to fit within Rule 14. Smith is not a person who may be liable to Stone for all or part of the original plaintiffs, (the Williams' group and their complaint for declaratory judgment) claim against Stone. This complaint is an improper use of third party practice under Rule 14 of the Alabama Rules of Civil Procedure.

CONCLUSION

It is clear that based on the foregoing brief and argument that Stone cannot show that the trial court improperly exercised its summary disposition powers. Stone cannot prevail on her arguments concerning failure to disclose facts which are not relevant nor can she prevail on a claim of fraud on the court. All of these issues are disposed of by the previous determination of the circuit court. Additionally, there are numerous other grounds which would have supported the decision below.

The decision is due to be affirmed.

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing upon all counsel of record by placing same in the U. S. Mail, postage prepaid and addressed correctly on this 27th day of April, 1988.

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APPENDIX G-5

IN THE SUPREME COURT
OF ALABAMA

CATHERINE YVONNE STONE, Appellant vs. GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P. C.; IRENE SMITH, Appellees	*	CASE NO. 87-269

BRIEF OF APPELLEES, GULF AMERICAN FIRE & CASUALTY COMPANY AND AMERICAN STATES INSURANCE COMPANY

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STATEMENT OF THE CASE

On September 10, 1985, Randall Hank Williams (hereinafter "Williams, Jr.") (CR 1-12), Wesley H. Rose, and

Roy Acuff, as trustees of liquidation for stockholders of Fred Rose Music, Inc. and Milene Music, Inc., (hereinafter "Williams Group") filed a declaratory judgment action against Catherine Yvonne Stone (hereinafter "Stone") (CR 1-12). The Complaint was amended on September 11, 1985 (CR 13-18), and on November 14, 1985 (CR 135-154), and as stated by the trial Judge in his Final Order On Motions For Summary Judgment issued on July 14, 1987, essentially requests that the Court make the following determinations:

> 1. Stone has no entitlement to any proceeds or royalties from the estate of Hiriam "Hank" Williams (hereinafter "Williams, Sr.").
>
> 2. As an adopted child, Stone is barred from attempting to establish that she is a child of Williams, Sr. and that Williams, Jr. is the sole child of Williams, Sr.
>
> 3. Stone has never been adjudicated, under the laws of the State of Alabama, to be the child of Williams, Sr.
>
> 4. Stone is barred from now attempting to establish that she a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders.
>
> 5. Hank Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr. (CR 1108)

Stone filed a counterclaim against Williams, Jr. on October 14, 1986, and alleged that she is the natural daughter of Williams, Sr. (CR 314) Williams, Jr. filed an Answer to the counterclaim of Stone on November 19, 1986. (CR 470-473)

Stone filed a Third Party Complaint against Gulf American Fire and Casualty Company (hereinafter "Gulf American") and American States Insurance Company (hereinafter "American States"), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart on October 24, 1986. (CR 361-409) The trial Judge in his Final Order On Motions for Summary Judgment summarized the allegations of the Third Party Complaint as follows:

> "The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr." (CR 1108-1109)

On November 24, 1986, Gulf American and American States filed a Motion to Dismiss the Complaint on the grounds that the Complaint failed to state a cause of action and that the allegations of the Third Party Complaint were barred by the statute of limitations. (CR 499-500) Jones, Murray & Stewart and Irene Smith filed Answers to the Complaint and raised a number affirmative defenses. (CR 494-498; 626-629) Pursuant to agreement of the parties, the Estate of Robert B. Stewart was dismissed as a Third-Party Defendant. (CR 1096-1097)

The Williams Group, Irene Smith, Jones, Murray & Stewart, P.C., Gulf American and American States filed Motions for Summary Judgment as to all claims made by Stone. (CR 467-469; 897-898; 899-902; 903-905)

The trial court entered its Final Order on Motions for Summary Judgment on July 14, 1987, and granted the Motions for Summary Judgment of all Third Party Defendants, including Gulf American and American States. (CR 1107-1119) The only issue not disposed of by the trial court was whether Randall Hank Williams was the sole child of Williams, Sr. (CR 1119) On September 2, 1987, this remaining issue proceeded to trial and on October 26, 1987, the trial court entered its Final Order determining that Randall Hank Williams was not in fact the only natural child of Williams, Sr. and that Stone is also the natural child of Williams, Sr. (CR 1165)

Stone filed Notice of Appeal to this Court on December 2, 1987, from the order of the trial court granting summary judgment to the Third Party Defendants. (CR 1166-1170)

The Circuit Clerk has consecutively numbered all pages in the Clerk's Record, and the Reporter has consecutively numbered the pages in the Reporter's Transcript. In view of such page numbering by the Clerk and the Court Reporter and in accordance with Rule 10(b) ARAP, Gulf American and American States will herein refer to the Clerk's Record page numbers as "CR" and the Reporter's Transcript page number as "RT".

ISSUES PRESENTED FOR REVIEW

I. WHETHER OR NOT STONE'S FRAUD CLAIM IS BARRED BY THE ALABAMA STATUTE OF LIMITATIONS IN THAT SHE FAILED TO ASSERT HER CLAIM UNTIL OVER SEVEN YEARS AFTER SHE HAD KNOWLEDGE OF THE ALLEGED FRAUDULENT CONCEALMENT?

Miller v. SCI Systems, Inc., 479 So. 2d 718 (1985)

Bank of Red Bay v. King, 482 So. 2d 274 (Ala. 1985)

Harrell v. Reynolds Metal Company, 495 So. 2d 1381 (1986)

II. WHETHER THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT FOR GULF AMERICAN AND AMERICAN STATES ON THE FRAUD CLAIM ASSERTED BY STONE?

Hutchins v. State Farm Mutual Automobile Insurance Company, 436 So. 2d 819 (Ala. 1983)

Collier v. Brown, 285 Ala. 40, 228 So. 2d 800, 802 (1969)

Hall Motor Company v. Furman, 285 Ala. 499, 234 So. 2d 37 (1970)

III. WHETHER THE TRIAL COURT PROPERLY DETERMINED THAT STONE FAILED TO STATE A CAUSE OF ACTION AGAINST GULF AMERICAN AND AMERICAN STATES?

Silk v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 437 So. 2d 112 (Ala. 1983)

Donald v. City National Bank of Dothan, 295 Ala. 320, 329 So. 2d 92 (1976)

McLaughlin v. McLaughlin, 53 Ala.Civ.App. 545, 302 So. 2d 233 (1974)

Campbell v. Alabama Powr [sic] Co., 378 So. 2d 718 (Ala. 1979)

STATEMENT OF THE FACTS

The trial Court made the following finding of facts in its Final Order On Motions for Summary Judgment of July 14, 1987 (CR 1107):

"On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

"The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

"Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

> 'After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and

other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.'

"Williams, Sr. dies intestate on January 1, 1953.

"Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

Billie Jean Jones, 'who states she is the widow',
Randall Hank Williams, Jr.,
Mrs. Irene Williams Smith, a sister
Elonzo H. Williams, father and
Lillian S. Stone, mother

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams Sr./Jett agreement several months earlier.

"Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

"On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

"The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

"In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

"Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made

a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

"In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

"The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

> 'D. *CATHERINE YVONNE STONE* – From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adpoted [sic] by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or

may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could perdict [sic] their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.'

In response, Stewart wrote in pertinent part:

'None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

a. Consider that by the adoption all rights under the renewal statute have been lost.

b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.

c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment

> which would bar a later claim would have to be made with the understanding of the facts by the court.'

"It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

"In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of and legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

"The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been

fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

"In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

"A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

> 'We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama Law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from Hank Williams compositions. . . .'

"The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows:

> 'The principal issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).
>
> In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .
>
> IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:
>
> . . . .2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.'

"The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order,

the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

> 'Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.
>
> The Court is impressed with the agrument [sic] of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".
>
> However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".
>
> The evidence shows the child has been . . . adopted. . . .By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.
>
> . . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:
>
> . . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.'

"Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

"Following the death of Williams, Sr., Fred Rose Music, Inc. and Milen Music, Inc., and their predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

"It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that 'the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child.' In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's 'ancestry may well be reasonably obvious to her, and further trouble may ensue.'

"The Estate of Williams, Sr. would be closed in August of 1975 without further incident to the issue of Stone's rights, if any, to a share in said estate.

"In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

"From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears from the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

Additional significant undisputed facts relating to Gulf American and American States show:

1. Gulf American issued a bond on behalf of Irene W. Smith, as the administratrix of the estate of Hank Williams, Sr. on March 18, 1958, which continued in effect until October 3, 1969, when Robert B. Stewart became the administrator of the estate of Hank Williams and another bond was issued on his behalf by Gulf American. (CR 906-907)

2. On April 27, 1970, the Final Decree on Partial and Final Settlement was entered in the Circuit Court of Montgomery County, Alabama, *In the Matter of the Estate of Hiriam "Hank" Williams*, deceased, Civil Action No. 25056 which discharged Irene W. Smith, as the administratrix of the Estate of Hank Williams from any further liability in connection with or arising out of the administration of the

estate and also discharged Gulf American of all liability as surety on the bond of Irene W. Smith. (CR 1082-1085)

3. On July 14, 1975, the Court entered a Decree Approving Final Settlement which discharged Robert B. Stewart as administrator of the Estate of Hank Williams and Gulf American, as surety on the bond of Robert B. Stewart. (CR 915)

4. Gulf American Fire & Casualty Company was merged with American States Insurance Company on or about March 31, 1979. (CR 906)

5. Gulf American and American States Insurance Company had no involvement in the Estate of Hank Williams other than the issuance of the administrator's bond on behalf of Irene W. Smith and later, Robert B. Stewart. (CR 906-908)

ARGUMENT

I. STONE'S FRAUD CLAIM IS BARRED BY THE ALABAMA STATUTE OF LIMITATIONS

The undisputed facts in this case clearly establish that the fraud claim of Stone is barred by the Alabama Statute of Limitations. In January of 1974, Stone reached the age of majority and was informed by her adoptive mother that Williams, Sr. might be her father. Stone had apparently determined that Williams, Sr. was her father as early as the fall of 1979 and continued to obtain documents relative to this issue from 1979 until 1980.

Prior to January 9, 1985, the statute of limitations in fraud cases expired one year after the fraud was actually discovered or should have been discovered (Ala. Code Section 6-2-3). Effective January 9, 1985, Section 6-2-3 was

amended and Section 6-2-39 was repealed to substitute "two years" for "one year" in such statute of limitations.

Since the fraud claim in this case was not filed until October 14, 1986, it was already barred under the old "one year" statute of frauds when the new "two year" statute became effective on January 9, 1985. However, even if the new "two year" statute was applicable, the fraud claim here is still barred by the new statute.

The law on the application of the statute of limitations in fraud cases was well stated by this Honorable Court in *Miller v. SCI Systems, Inc.*, 479 So. 2d 718 (1985), as follows:

> "The statute of limitations in fraud cases expires one year after the fraud is actually discovered or should have been discovered. (Ala. Code Section 6-2-3 (1975).) The statute begins to run when the plaintiff learns facts which would provoke inquiry by a person of ordinary prudence and, by simple investigation of the facts, the fraud would have been discovered. See, e.g., *Sexton v. Liberty National Ins. Co.*, 405 So. 2d 18 (Ala. 1981); *Gonzales v. U-J Chevrolet Company, Inc.*, [451 So. 2d 244 (Ala. 1984)]."

The rule was also stated in *Bank of Red Bay v. King*, 482 So. 2d 274 (Ala. 1985), as follows:

> "The statute of limitations applicable to actions for fraud is found at Code of 1975, Section 6-2-39. Under this section, the applicable period is one year, subject to the exception found in Section 6-2-3, which provides:
>
> > 'In actions seeking relief on the ground of fraud where the statute has created a bar, the claim must not be considered as having

> accrued until the discovery by the aggrieved party of the fact constituting the fraud, after which he must have one year within which to prosecute his action.'

Thus, the statute does not begin to run until the fraud is discovered.

> "The 'fact constituting the fraud" is deemed to have been discovered when it ought to have been discovered; that is, at the time of the discovery of facts which would provoke inquiry by a person of ordinary prudence and which, if followed up, would have led to the discovery of the fraud.'
>
> *Papastefan v. B & L Construction Co.*, 385 So. 2d 966 (Ala. 1980)."

Again, this Court recently reiterated the rule in *Harrell v. Reynolds Metal Company*, 495 So. 2d 1381 (1986), as follows:

> "Facts constituting fraud are deemed discovered 'when the person either actually discovered, or when the person ought to or should have discovered, facts which would provoke inquiry by a person of ordinary prudence, and, by simple investigation of the facts, the fraud would have been discovered.' *Gonzales v. U-J Chevrolet Co.*, 451 So. 2d 244, 247 (Ala. 1984); *Cooper Chevrolet, Inc. v. Parker*, [Ms. 84-362, December 6, 1985] ___ So. 2d ___ (Ala. 1985). If the facts regarding the discovery of the fraud are uncontroverted and they demonstrate that the discovery was more than one year prior to the commencement of the lawsuit, summary judgment is appropriate. *Gonzales, supra*, at 247; *Moulder v. Chambers*, 390 So. 2d 1044, 1046 (Ala. 1980)."

Stone had personal knowledge, or in the exercise of reasonable diligence should have known, the existence of the alleged fraudulent concealment by the Third Party Defendants in 1974. In 1979, Stone believed that she was the daughter of Williams, Sr., but did not seek to enforce her alleged rights and claims until 1986.

The statute of limitations is tolled and the time period for bringing an action extended when there has been a fraudulent concealment by the party guilty of the fraud. *Ryan v. Townsend Ford, Inc.*, 409 So. 2d 784 (Ala. 1981). However, the burden is on the party bringing an action for fraud to show that he comes with the purview of this provision if it otherwise appears that the statutory period has expired. *Lamplighter Dinner Theatre, Inc. v. Liberty Mut. Ins. Co.*, 792 F.2d 1036 (11th Cr. 1986).

The trial court found that the undisputed facts show that in January 1974, Stone was informed by her adoptive mother that Williams, Sr. might be her father and that Stone had arrived at the opinion that Williams, Sr. was indeed her father in the fall of 1979. The fraud action in this case was not filed until October 14, 1986. A period of approximately seven years elapsed from the time Stone first arrived at an opinion that Williams, Sr. was her father until she asserted her alleged fraud claim. Stone has not met her burden of showing a fraudulent concealment so as toll the statute of limitations and thereby extend the time to bring her action. Accordingly, any claim for alleged fraudulent concealment by the Third Party Defendants is barred by the statute of limitations.

II. GULF AMERICAN AND AMERICAN STATES WERE ENTITLED TO SUMMARY JUDGMENT ON THE FRAUD CLAIM ASSERTED BY STONE

The essential elements of actionable fraud in Alabama were clearly stated in *Hutchins v. State Farm Mutual Automobile Insurance Company*, 436 So.2d 819 (Ala. 1983), as follows:

> "Actionable fraud in Alabama consists of (1) a false representation, (2) concerning a material fact; (3) the plaintiff must rely upon that false representation; and (4) plaintiff must be damaged as a proximate result. *International Resorts, Inc. v. Lambert*, 350 So. 2d 391 (Ala. 1977). Under these elements it is fundamental that the representee who has relied on the defendant's alleged misstatements and the plaintiff who was injured must be one and the same. *Ray v. Montgomery*, 399 So. 2d 230 (Ala. 1980); *Jordan & Sons v. Pickett*, 78 Ala. 331 (1884)."

Therefore, to overcome the summary judgment motion of Gulf American and American States in this action for fraud, the Plaintiff had to produce some admissible evidence of the following essential elements:

1. A false representation;
2. The false representation must concern a material existing fact;
3. The Plaintiff must rely on that false representation;
4. Plaintiff must be damaged as a proximate result.

Earnest v. Pritchett-Moore, Inc., 401 So. 2d 752, 754 (Ala. 1981); *Pugh v. Kaiser Aluminum & Chemical Sales, Inc.*, 369 So. 2d 796, 797 (Ala. 1979); *International Resorts, Inc. v. Lambert*, 350 So. 2d 391, 394 (Ala. 1977).

Under these requirements, it is readily apparent that there was no evidence before the trial judge of a false representation by Gulf American and American States to the Stone. Stone had no contact whatsoever with Gulf American and American States. Therefore, it is obvious that the Stone did not have a cause of action against Gulf American and American States for direct fraud.

In an action for fraud based on the suppression of material facts, there must be an obligation on the Defendant to communicate such material facts to the Plaintiff. Unless confidential relations or special circumstances exist, mere silence is not a fraud; there must be active concealment or misrepresentation. *Collier v. Brown*, 285 Ala. 40, 228 So. 2d 800, 802 (1969).

One of the essential elements of a legally viable claim for fraud based on suppression of a material fact is that there must be a duty to disclose in the first instance. *Hall Motor Company v. Furman*, 285 Ala. 499, 234 So. 2d 37 (1970). Here, there was no such duty on Gulf American and American States. Stone's claims against Gulf American and American States were simply legally insufficient to state a claim upon which any relief could be granted against Gulf American and American States.

The only involvement of Gulf American or American States in this matter was the issuance of a surety bond for the administratrix of the estate, Irene W. Smith, and later the administrator of the estate, Robert B. Stewart. Apparently, Stone contends that Gulf American and American States had a duty to disclose to the Court in 1953 that she was the alleged daughter of Williams, Sr.

The law in Alabama is crystal clear that the absence of a confidential relationship which imposes an obligation to speak, mere silence can not constitute a fraud. *Harrell v. Dodson,* 398 So. 2d 272 (Ala. 1981). In this case, the pleadings and the evidence show without dispute that there was no fiduciary duty owed by Gulf American and American States to Stone. There was no confidential relationship between Gulf American and Stone at any time.

The record is silent as to any evidence of any kind against Gulf American and American States. In fact, Stone does not even argue in brief that Gulf American and American States had any duty to her arising out of the administration of the estate of Williams, Sr. Accordingly, Gulf American and American States were entitled to a summary judgment as a matter of law.

III. THE TRIAL COURT PROPERLY DETERMINED THAT THE THIRD PARTY COMPLAINT FAILED TO STATE A CAUSE OF ACTION AGAINST GULF AMERICAN AND AMERICAN STATES

The trial Court in its Order On Motions for Summary Judgment held that the Third Party Complaint failed to state a cause of action and stated as follows:

> "As to the third party claim by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. *If the existence of Stone had been made known to the Court by any of the third party*

> *defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid.* The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. *At the time that the alleged fraudulent concealments puportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous."* (emphasis added)

There were no undisputed admissible facts presented to the trial Court in this case to support the essential elements of a claim for fraud against Gulf American and American States. Under ARCP 56, summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Silk v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 437 So. 2d 112 (Ala. 1983).

Where it is clear that no genuine material issue of fact exists based on the pleadings, depositions and exhibits, summary judgment is not only appropriate, but also useful in promoting judicial efficiency and avoiding unneccessary [sic] trials. *Donald v. City National Bank of Dothan*, 295 Ala. 320, 329 So. 2d 92 (1976). Under the foregoing principles of law and the provisions of Rule 56, it is clear that the issues involved in this case against Gulf American and American States involved only matters of

law, not fact, and the Circuit Court was correct in disposing of these issues through summary judgment for the Defendants Gulf American and American States.

Where the facts asserted are such that, even if established, there would be no recovery, then the case turns on a question of law properly disposed of on a motion for summary judgment. *McLaughlin v. McLaughlin*, 53 Ala.Civ.App. 545, 302 So. 2d 233 (1974); *Campbell v. Alabama Power Co.*, 378 So. 2d 718 (Ala. 1979).

The undisputed facts clearly demonstrate that even if Stone's identity and claim as a natural child of Williams, Sr. had been made known to the Court at any time, she would not be entitled to any recovery. Therefore, Stone failed to establish a cause of action for fraudulent concealment since full disclosure at any time from 1953 until 1967 would still result in the denial of her claim to the proceeds of the Estate of Williams, Sr. Accordingly, the trial Court correctly held that Gulf American and American States were entitled to summary judgment.

CONCLUSION

Stone's alleged fraud claim against Gulf American and American States is barred by the statute of limitations since the undisputed facts show that she believed that Williams, Sr. was her father in 1979. The fraud claim was not asserted by Stone until 1986. The statute of limitations for fraud actions bars any claim that Stone might have against Gulf American and American States.

Stone adduced no evidence that Gulf American and American States did anything to deceive her or to induce

her to act to her detriment. There was no evidence that Gulf American and American States made any false representation to Stone or that she relied on anything done by Gulf American and American States. There was no confidential relationship between Stone and Gulf American and American States; therefore, Gulf American and American States had no duty to communicate with Stone concerning any alleged rights that she might have had in the Estate of Williams, Sr.

Finally, the trial Court correctly held that Stone failed to state a cause of action for which recovery can be had. Gulf American and American States took no action which had any adverse effect on any claim by Stone to the Estate of Williams, Sr. If you accept all of Stone's allegations as true, she is still not entitled to any recovery.

In view of the foregoing, Gulf American and American States were entitled to a summary judgment in the trial court, and the order of the trial Judge granting such summary judgment is due to be affirmed by this Honorable Court.

Respectfully submitted,

/s/ James E. Williams
JAMES E. WILLIAMS

Attorney for Appellees, Gulf American Fire & Casualty and American States Insurance Company

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Appellees, Gulf American Fire & Casualty and American States Insurance Company, has been served upon counsel of record, as follows:

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by mailing a copy of same to each in the United States mail, properly adddressed, [sic] first-class postage prepaid, on this the 27th day of April, 1988.

/s/ James F. Hampton
OF COUNSEL

APPENDIX G-6

IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE, Third Party Plaintiff/Appellant	)	
VS.	)	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; Third Party Defendants/ Appellees	)	S.CT. NO. 87-269

ON APPEAL FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY
CIRCUIT CASE NO. CV 87-1316

REPLY BRIEF OF APPELLANT, CATHERINE YVONNE STONE

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II. WHETHER CATHERINE YVONNE STONE PRESENTED EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT?

III. WHETHER THE THIRD PARTY CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS OR

LACHES? (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT, BUT IS RAISED BY THE APPELLEES IN THEIR BRIEFS.)

IV. WAS THE THIRD PARTY COMPLAINT PROPERLY FILED, AND WAS THE OBJECTION PROPERLY MADE TO ANY POSSIBLE DEFECT OF PLEADING? (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT OR RAISED IN ANY PLEADING OR PROCEEDING IN THE COURT BELOW, BUT IS RAISED BY THE APPELLEE, JONES MURRAY & STEWART, IN ITS BRIEF.)

STATEMENT OF THE CASE

Appellant, Catherine Yvonne Stone, adopts and reincorporates by reference the Statement of the Case set out in her original brief, and adds the following facts.

Count Four of the Third Party Complaint states a cause of action against Gulf American Fire and Casualty Company and American States Insurance Company, as successor in interest of Gulf American on the bond. Paragraph 36 of the complaint states:

> 36. In the event Stone recovers a judgment against either Smith, Stewart or Jones Murray & Stewart or real parties in interest, third party defendant Gulf American Fire and Casualty Company and American States Insurance Company, successor in interest, and real parties in interest A, B, F and N, are liable as surety and Stone hereby demands judgment therefor.

Catherine Yyvonne Stone makes no other claim of Gulf American and American States.

The defendants failed to raise any objection to the Third Party Complaint by Answer dated November 24, 1986.

STATEMENT OF THE FACTS

Appellant adopts and reincorporates by reference the Statement of the Facts which is set out in her original brief.

ARGUMENT

I. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS WERE CHARGED WITH A DUTY TO NOT WILLFULLY CONCEAL THE EXISTENCE AND IDENTITY OF A NATURAL CHILD AND POTENTIAL HEIR OF THE DECEASED.

The existence of a natural daughter of Williams Sr. is not a fact of no consequence. The appellees argue in their briefs that there was no duty to disclose the existence of Cathy Stone to the court at any time because she "was not as a matter of law, an heir or potential heir under the law of Alabama in 1953 and 1967." They suggest that imposing the burden upon them is tantamount to requiring them to disclose to the court the existence of unrelated neighbors, friends and fictional people of the deceased, and requiring the lawyers and administrators to foretell the law.

This is not an answer to the arguments presented by Cathy Stone. It is not the responsibility or the right of the administrators and the attorneys for the estate to make a legal determination or judgment that a child of the deceased is not and cannot be an heir of the deceased – that privilege rests solely with the Court. The duty of the administrator is to advise the court of the existence of known children and potential heirs, so that the Court may exercise its jurisdiction and plenary power to make

the determination of heirship. *In Re Bailey's Estate*, 233 N.W. 845 (Wis. 1931); *In Re Flowers*, 493 So.2d 950 (Miss. 1986). If the administrator is permitted to make a clandestine determination of heirship, then what need would there be for the Court?

The appellees make several assumptions in their briefs. It is assumed that the original trial court would not have determined the child to be an heir of the estate. The truth of this assumption is not known, since the original trial court never was presented with the knowledge of the child – instead, the administrator and the attorney made the determination that she was not an heir in 1953. It is further assumed that the child had little or no evidence to prove that she was the child and a legal heir. It is not the privilege of the appellees to make these assumptions – however, it was their duty to tell the court about the child so that evidence, not assumptions, could be put before the court, and the court could make a legal determination instead of a guess or further assumptions.

An administrator is not vested, nor should be vested, with the right to determine heirship *extra judicially and sub rosa*. For instance, consider the situation where a child is not disclosed because the administrator assumes the child is either not of the blood of the deceased, or if so, is illegitimate. The child is thereafter precluded from establishing a blood relationship; written acknowledgment; a marriage and recognition, or a prior successful paternity action. To find no duty on the administrator to disclose known illegitimates is to allow the administrator, in many cases a non-lawyer, to judicially resolve all issues presented by a quagmire of facts and alternative theories of heirship.

The establishment of Stone's heirship right which she was denied in 1953, is of no consequence to the issues before the Court. The issue raised is whether the administrators owed a duty to the biological child and potential claimant to notify the Court of her existence. To find that no duty existed because she probably would have lost her claim is to determine whether a duty exists based upon the potential for damages.

The truth of the matter is that no one will ever know what the outcome of a 1953 claim and possible appeal would have been, for the third party defendants intentionally denied her those rights. If Jones Murray & Stewart is so certain of the ultimate outcome, why did they go to such great lengths to suffocate her rights and existence.

Stone does not ask this Court to impose upon administrators the duty to foretell a change in the law, nor to designate neighbors of the deceased, but rather, merely to recognize that a known biological child, albeit illegitimate, has such a natural, moral and physical relationship to the deceased, as to require her known existence be disclosed to the Court which is administering the affairs of her dead father.

Jones Murray & Stewart claims that Stone waited until Robert Stewart was "dead and buried" before alleging fraud against him. This is factually accurate in that during life Mr. Stewart so carefully protected his dark secret; that he had participated in denying a child her birthright, identity and potential claims to her father's sizeable estate. It is not surprising that, in death, the secret truths of Robert Stewart have now become known to the world. Truth has a way of doing that.

II. CATHERINE YVONNE STONE DID PRESENT EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT.

Appellant adopts and reincorporates by reference her argument on this issue presented in her original brief.

III. THE THIRD PARTY CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS OR LACHES.

Appellees raise the statute of limitations and laches in their briefs. Although these issues were raised in the court below on the motions for summary judgment, they were not addressed by the trial court in its findings of fact or the order.

Appellees contend that Stone's fraud on the court action is barred by the statute of limitations of §6-2-3, Code of Alabama. Fraud on the court is an equitable action. *Hogan v. Scott*, 186 Ala. 310, 313-14, 65 So.2d 209 (1914). If delay is to be raised as a defense to this action, laches, not the statute of limitations is the proper affirmative defense. Delay will bar the cause of action if:

> To be affected by laches, the delay must have been with notice of the existence of the right, resulting in disadvantage, harm, or prejudice to another, or have operated to bring about changes in conditions and circumstances so that there can no longer be a safe determination of the controversy. Thus, specific facts which make the delay culpable must appear.

Touchstone v. Peterson, 443 So.2d 1219, 1226 (Ala. 1983).

The pivotal question is when did Cathy Stone learn of the scheme to conceal her identity and existence from

the Court? Appellees cite the year 1974. However, in that year, she heard only that she might be the daughter of Williams Sr. She did not receive any evidence of the fraudulent scheme until 1985, during the course of discovery in the action of *Cathy Yvonne Stone v. Hank Williams Jr., et al.*, United States District Court Southern District of New York, Case No. 85 Civ. 7133, an action commenced to recover under the federal copyright act. Jones Murray and Stewart quote from a letter written on August 5, 1985 by Keith Adkinson, Stone's attorney to Williams Jr. and Acuff-Rose/Opryland: "We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father." (page 12 of Jones Murray & Stewart brief) There is no mention of the date of discovery other than that letter. The third party action was filed on October 24, 1986. Accordingly, the only indication in the record is that suit was filed within 16 months of discovery of the scheme to conceal stone.

Delay alone is insufficient to bar a claim for laches. Appellees must show some prejudice by the delay. It is ironic that the very persons who engaged in the scheme of active concealment now claim prejudice because Stone could not discover the very facts which were concealed by them. Appellees should not be permitted to raise the defense of laches when they created the very circumstances which caused the delay. They do not come with "clean hands." Furthermore, what prejudice could be suffered when appellees have known all along that she was the natural daughter, that she was not disclosed to the court and that if she discovered her ancestry, "further

trouble may ensue." (Letter to Robert Stewart from Richard Frank Jr. dated April 15, 1974.)

Under the doctrine of laches, appellees can complain about neither the period of delay or prejudice. At the least, there is a question of fact about the date of discovery of the fraudulent scheme. The date she learned who her natural father was is not the issue in this case.

In the alternative, if this Court determines that the legal statute of limitations does apply, then Cathy Stone is still within the 2 year limitation period, measuring from the date of discovery in 1985. The "new" statute of limitations for fraud became effective on January 9, 1985. Even assuming that she actually discovered the fraudulent scheme sometime in 1984, the amended §6-2-3 would apply. *Bajalia v. Jim Magill Chevrolet, Inc.*, 497 So.2d 489 (Ala. 1986). The complaint was filed within the applicable statute of limitations.

The third party complaint is not barred by the legal statute of limitations or the doctrine of laches.

IV. THE THIRD PARTY COMPLAINT WAS PROPERLY FILED, AND THE OBJECTION WAS PROPERLY MADE TO ANY POSSIBLE DEFECT OF PLEADING (THIS ISSUE WAS NOT ADDRESSED BY THE TRIAL COURT OR RAISED IN ANY PLEADING OR PROCEEDING IN THE COURT BELOW, BUT IS RAISED BY THE APPELLEE, JONES MURRAY & STEWART, IN ITS BRIEF.)

Jones Murray & Stewart raises the novel question of the propriety of the Third Party Complaint. This was not raised by any answer, (R. 494-497; 626-629; 1098-1101;)

nor motion (R. 899-902). Neither was the matter considered by the trial court in its Order of Summary Judgment. (R. 1107-1109)

This Court generally disfavors considering matters not raised at the trial level. *Cf. Smith Water Authority v. City of Phenix City*, 436 So.2d 827 (Ala. 1983) *Simmons Machinery Co. Inc. v. R & R Brokerage, Inc.*, 409 So.2d 743 (Ala. 1981). Where no motion is filed which attacks the *merits* of the third party claim, the claim may not be dismissed with prejudice as Jones Murray & Stewart requests. See *McMillan v. Hunter*, 439 So.2d 153 (Ala. 1983) How can Jones Murray & Stewart claim that the trial court should have dismissed the third party complaint when they never requested the court below to do so.

At any rate, the theory of liability is one of indemnification. The original complaint sought a declaration, *inter alia*, that Stone was not an heir to the Williams estate. In turn, Stone argues that if she is declared not to be an heir, it is the fault of the third party defendants. While the Original Complaint did not seek damages, there is no doubt that the adverse ruling to Stone did cause her great pecuniary damage; a damage which she rightfully seeks indemnification from the third party defendants. The fact that Stone did not appeal the judgment on the Original Complaint in nowise affects her right to seek indemnification.

Lastly, there is no question but that the Third Party Claim "arises out of" the occurrence made the basis of the Original action. Favoring substance over form, the "third party complaint" may easily be viewed as a cross claim pursuant to A.R.C.P. 13(g); 19 and 20. This would in no

way act as an unfair detriment to Jones Murray & Stewart.

CONCLUSION

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Catherine Yvonne Stone respectfully requests that this Honorable Court reverse the judgment and remand the cause for further proceedings.

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CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 27th day of May, 1988.

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APPENDIX G-7

IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE, Third Party Plaintiff/Appellant vs. GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH, Third Party defendants/ Appellees	)	S. Ct. No. 87-269

ON APPEAL FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY
CIRCUIT COURT CASE NO.: CV 85-1316-K

PETITION OF RANDALL HANK WILLIAMS FOR LEAVE TO APPEAR FOR PURPOSE OF SEEKING TO VACATE AND MODIFY OPINION OF JULY 5, 1989 AND FOR STAY OF ISSUANCE OF CERTIFICATE OF JUDGMENT PENDING FURTHER PROCEEDINGS

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IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE, Third Party Plaintiff/Appellant vs. GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH, Third Party defendants/ Appellees	)	S. Ct. No. 87-269

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I

INTRODUCTION

As recognized by this Court in its July 5, 1989 opinion, this case is unique. The relief fashioned by the Court is equally unique. Petitioner Randall Hank Williams, Jr. ("Williams, Jr.") was not a party to this appeal, nor was he a party to the third-party complaint which is the subject of this appeal. Williams, Jr., one of the parties who initiated the underlying litigation by the filing of a declaratory judgment action against Appellant Stone, had no reason to be involved in the ancillary proceedings between Stone and the third-party defendants named by her. In the trial court, he had secured a judgment in his favor declaring that Stone was *not* entitled to any interest in the estate of Hiriam "Hank" Williams ("the estate") and that Williams, Jr. was the sole heir of that estate. In the court below Williams, Jr. was *granted* the relief he sought. *Stone took no appeal from that judgment and thus it became res judicata.*[1] Nevertheless, the opinion of this Court may be construed to give Stone a significant interest in the estate *at the direct expense of Williams, Jr.* The Court's ruling came in proceedings to which Williams, Jr. was not a party and did not participate, and on claims alleging that others – not Williams, Jr. – were guilty of

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[1] In discussing res judicata in this petition, we are *not* talking about any res judicata effect of the 1967 and 1968 orders of the Circuit Court of Montgomery County. We are instead referring to the res judicata effect of the unappealed portions of the 1987 judgment entered by then Circuit Judge Kennedy.

fraud and other wrongdoing. This deprivation of Williams, Jr.'s interest in the estate and in the final, unappealed judgment which he secured below violates not only his rights to due process under the state and federal constitutions, but also ignores the important principles of finality embodied in res judicata and related doctrines.

For the reasons discussed herein, Williams, Jr. respectfully requests leave of this Court to appear before it for purposes of seeking to vacate and modify the July 5, 1989 opinion and further requests a stay of the issuance of the certificate of judgment in this matter pending further proceedings on this petition. He specifically requests the opportunity to file any brief the Court may deem appropriate and to present oral argument to this Court on the matters raised herein.

II

STATEMENT OF THE CASE

Williams, Jr. and other parties commenced this litigation by filing against Stone a petition for declaratory judgment (subsequently twice amended) in which, among other things, Williams, Jr. requested a declaration that Stone has no legal interest in the estate and that, in accordance with earlier orders of the Circuit Court of Montgomery County, Alabama, Williams, Jr. is the estate's sole heir.[2] Stone contended that the petition (the

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[2] The *second* amended complaint is the operative pleading. See particularly paragraph 4 of the prayer for relief, at p. 14. The Court's July 5, 1989 opinion, at footnote 2, incorrectly quotes from the *original* complaint, which was superseded by amended pleadings *before* the mandamus proceedings in this Court.

second amended complaint) failed to state a justiciable controversy and should be dismissed. When the trial court disagreed, Stone sought review in this Court by way of mandamus. In a unanimous panel opinion authored by Justice Adams, this Court held that the petition *did* state a justiciable controversy and that the litigation should proceed. *Ex parte Stone*, 502 So.2d 683 (Ala. 1986). In its opinion, this Court noted that Stone was claiming an interest in the estate adverse to that of Williams, Jr., that she was attacking long-standing orders of the Circuit Court which had previously decided the identity of the estate's heirs, and that "the declaratory judgment action filed by [Williams, Jr.] is . . . a viable means of settling this dispute." 502 So.2d at 686.

Back in the trial court, Stone answered the second amended complaint and counterclaimed, alleging in essence that she is the natural daughter of Hank Williams and that she was therefore entitled to share in the estate. She specifically averred the existence of a justiciable controversy *between her and Williams, Jr.* regarding whether he was the sole heir or whether, on the other hand, she had an interest in the estate. Williams, Jr. answered, *admitting the existence of the justiciable controversy alleged by Stone in her counterclaim.*

Shortly thereafter, Stone filed a third-party complaint against various parties, including Jones, Murray & Stewart, P.C., Gulf American Fire & Casualty Company, American States Insurance Company, and Irene Smith. Naturally, Williams, Jr. was not made a party to the third-party complaint, which, *by definition*, is the mechanism used by a defendant to bring in a *new* party to the action who is or may be liable to him for all or part of the

plaintiff's claim against him. *See* Committee Comments to Ala.R.Civ.P. 14. Significantly, Stone did not assert in her counterclaim against Williams, Jr. any of the claims regarding fraud, fraudulent concealment and conspiracy which she asserted against the third-party defendants. Stone sought damages against the alleged wrongdoers, but also sought, on the first claim for relief, to reopen the estate and secure her proportionate interest therein. *This latter relief was, for all practical purposes, the same relief Stone sought by her counterclaim against Williams, Jr., and which Williams, Jr. was contesting in his declaratory judgment action against Stone.*[3]

Williams, Jr. and the third-party defendants moved for summary judgment – Williams with respect to his second amended complaint and Stone's counterclaim,

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[3] As discussed below, Stone's third-party complaint was cognizable only to the extent that she was seeking *indemnification* from the third-party defendants in connection with relief which Williams, Jr. might get against her on his petition for declaratory judgment. While the damage claims made sense in *this* context, at least analytically, the request to reopen the estate clearly did not. The third-party complaint, by definition, would be viable only if Stone *lost* on the principal controversy with Williams, Jr. But if she did lose that controversy, obviously the estate could not be reopened because Williams would have been adjudicated in the principal action to be the sole heir and she would have been adjudicated to have no interest in the estate. Thus, as distinguished from the damage claims, Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage. Had Jones, Murray & Stewart, P.C., Irene Smith, and the two insurance companies been made additional parties to Stone's counterclaim, as permitted by Ala.R.Civ.P. 13(h), the claim would have made sense, at least procedurally.

and the others with respect to the third-party complaint. The circuit court *granted* all the motions and on July 14, 1987 entered an appropriate order and judgment. The court reserved ruling on the question of Stone's paternity, which was addressed in subsequent proceedings. In its order and judgment, the court described the controversy as follows:

> [Williams, Jr.] seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from [the estate] . . . [and] that Williams, Jr. is the sole child and sole heir of Williams, Sr. and thus is the sole person with rights in and to [the estate] . . .
>
> * * *
>
> In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in [the estate].

After discussing the evidence and analyzing the parties' arguments, the trial court granted judgment *in favor of Williams, Jr.* on all issues raised by his second amended complaint and by Stone's counterclaim, with the exception of whether Stone is the biological child of Hank Williams. The court also granted judgment *against* Stone on her third-party complaint.

Because the paternity issue was not yet decided, the trial court's July 14, 1987 order was interlocutory and not subject to immediate appeal. The court adjudicated the paternity issue and entered a final order in the case on October 26, 1987. Under Ala.R.App.P. 4, any notice of appeal was accordingly due to be filed by December 7,

1987, the date 42 days after entry of the final order. On December 2, 1987, Stone filed notice of appeal from the circuit court's order dismissing Stone's third-party complaint. Stone did *not*, at that time or thereafter, appeal from the circuit court's final order in favor of Williams, Jr. on his seconded amended complaint or Stone's counterclaim. Those judgments thus became final and binding upon the passage of the 42nd day following October 26, 1987.

III

ARGUMENT

A. *Introduction.* We begin by noting again that it was *this Court* which held that Williams, Jr.'s second amended complaint stated a justiciable controversy between Stone and him regarding their respective rights to the estate. Stone's subsequent counterclaim alleged the existence of the same controversy. When the circuit court adjudicated that controversy in Williams, Jr.'s favor – declaring him to be the sole heir and Stone to have no interest in the estate – Stone *accepted the ruling* and did *not* appeal it. Stone appealed *only* with respect to the decision dismissing her third-party complaint. The timely filing of a notice of appeal is jurisdictional, as this Court has held on many occasions, and the passage of the forty-second day makes the trial court's judgment final and binding on the parties to it. *Stewart v. Younger*, 375 So.2d 428 (Ala. 1979).

We also respectfully remind this Court of the well-established principle that where the appellant files notice of appeal with respect to only a specified judgment or

specified part of a judgment, this Court has *no jurisdiction* to review other judgments or issues from which no appeal was taken. *Threadgill v. Birmingham Board of Education*, 407 So.2d 129, 132 (Ala. 1981). Accordingly, this Court was without jurisdiction, in connection with its review of the dismissal of the third-party complaint, to review or overturn the circuit court's decision declaring Williams, Jr. to be the estate's sole heir, and Stone to have no interest in the estate, because Stone took no appeal *from those judgments*.

We also call to the Court's attention that Williams, Jr., having secured in the trial court the ruling which he sought and not being a party to the third-party complaint, did not participate in the appeal and was *not* before this Court. He was, instead, justifiably relying on the sanctity of the *unappealed* final judgments in his favor on his declaratory judgment complaint and Stone's counterclaim. In other words, having been declared in contested proceedings with Stone to be only person with an interest in the estate, Williams, Jr. believed his fight was over once Stone decided to forego an appeal of the judgment in his favor. His reliance on the favorable decision on his declaratory judgment action was reinforced, of course, by the fact that this Court had already held that resolution of that action was a proper way to settle the controversy between Stone and him regarding their respective rights in the estate.

If the Court's July 5, 1989, opinion is construed to actually give Stone an interest in the estate, it is plainly inconsistent with and contradictory of the unappealed final judgment in favor of Williams, Jr. on the declaratory judgment action recognized by this Court to be "a viable

means of settling [the] dispute" between Williams, Jr. and Stone regarding their respective interests in the estate. *See* 502 So.2d at 685-86.

B. *Res Judicata Precludes The Relief Awarded By This Court To Stone.* If it is the intention of this Court's July 5, 1989 decision to give Stone a share of the estate at the expense of Williams, Jr., the decision flatly violates the finality principles of res judicata.

Res judicata and its sub-part, collateral estoppel, are two separate rules or sets of rules for determining the conclusiveness of judgments. *Wheeler v. First Alabama Bank of B'ham*, 364 So.2d 1190, 1199 (Ala. 1978). Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit, on the same cause of action, involving the same parties or their privies. This "claim preclusion" doctrine prohibits the relitigation of all matters which were, or could have been, litigated in the prior action. *Century 21 Preferred Properties, Inc. v. Ala. Real Estate Comm'n.*, 401 So.2d 764, 768-70 (Ala. 1981). Stated otherwise, the elements necessary to establish a res judicata bar are as follows: (1) prior judgment rendered by court of competent jurisdiction; (2) prior judgment rendered on the merits; (3) parties to both suits substantially identical; and (4) same cause of action present in both suits. *Wheeler*, 365 So.2d at 1199.

Collateral estoppel operates where the subsequent suit between the same parties (or their privies) is not on the same cause of action. *Wheeler*, 364 So.2d at 1199. Requirements for collateral estoppel (sometimes referred to as "issue preclusion") are (1) issue identical to one involved in previous suit; (2) issue actually litigated in

prior action; and (3) resolution of the issue was necessary to the prior judgment. If these elements are present, the prior judgment is conclusive as to those issues actually determined in the prior suit. *Id.* "In sum, collateral estoppel is a doctrine designed to preclude a person who has once litigated an issue in circumstances affording him a full and fair opportunity to present his arguments from contesting the same issue in a different case if it was necessarily determined in the first case." 1B J. Moore, Moore's Federal Practice ¶ 0.411 [2] (2d ed. 1988).

Williams, Jr. filed a declaratory judgment action which was recognized by this Court to be "a viable means" of settling the dispute between Williams, Jr. and Stone regarding their respective interests in the estate. Stone, too, asserted the existence of a justiciable controversy in her counterclaim. Declaratory judgments are governed by res judicata principles just as are other judgments. As the Restatement (Second) of Judgments §33 states:

> A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action.

Stone was obviously a party to the proceedings in the trial court and the question of the respective rights of her and Williams, Jr. in the estate was unquestionably adjudicated on the second amended complaint and the counterclaim. Adjudication of those rights were without doubt necessary to resolution of the contested claims, and Stone had a full and fair opportunity to present her arguments.

The judgments in Williams, Jr.'s favor on those claims were not appealed and thus became final and binding on Stone. As Professor Moore has written:

> *If an appeal is taken from only part of the judgment, the remaining part is res judicata,* and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment. (emphasis added)

1B J. Moore, Moore's Federal Practice ¶ 0.404 [4.-4] (2d ed. 1988). *See also Reed v. Allen,* 286 U.S. 191, 198-200 (unappealed judgment in first action is valid and subsisting and could not be attacked in a second action).

This Court's decision of July 5, 1989 – if it is intended to take part of the estate from Williams, Jr. and give it to Stone – effectively revokes and rescinds the binding, previously existing final judgment in Williams, Jr.'s favor. Yet, res judicata or collateral estoppel should surely bar Stone from receiving such a ruling at the expense of Williams, Jr. All the elements necessary to invocation of the finality doctrine unquestionably are present. Moreover, res judicata applies even though the judgment may have been *wrong* or rested on a legal principle subsequently *overruled* in another case. *Federated Dept. Stores, Inc. v. Moitie,* 452 U.S. 394, 398, 69 L.Ed 2d 103, 101 S.Ct. 2424 (1981).

Looking at the situation from a slightly different perspective emphasizes the error made by this Court. Nothing required Stone to pursue her claims against Jones, Murray & Stewart, P.C. and the other parties by way of an impleader action. Rule 14 claims are *not* compulsory and may be pursued in an entirely independent

action. *See* 1 Ala. Rules Civ. Proc. 2nd Ed. (Lyons), §14.1. Had the claims been pursued in an independent action, one could hardly argue that Stone would not have been barred by res judicata or collateral estoppel on any claim to a share of the estate. Such an action certainly could not have proceeded in the absence of Williams, Jr. as a party defendant. *See* Ala.R.Civ.P. 19(a). Williams, Jr. would obviously have asserted res judicata as a bar to the action and he just as obviously would have succeeded with that defense. This result should not be changed by the fact that Stone pursued her claim under Rule 14 rather than in an independent action. We will address this point again in the discussion of how the Court's adjudication of Stone's third-party claim (without a trial) deprived Williams, Jr. not only of his rights under Rule 19(a), but also of due process of law.

Res judicata and collateral estoppel have the dual purpose of protecting litigants from the burden of multiple litigation of the same issue and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 58 L.Ed. 2d 552, 909 S.Ct. 645. The American courts have long recognized that "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525, 75 L.Ed 1244 (1930). The United States Supreme Court has stressed that "[t]he doctrine of res judicata is not a mere matter of practice or procedure . . . It is a rule of fundamental and substantial justice, 'of public policy and private peace,' which should be cordially regarded

and enforced by the courts . . . " *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 61 L.Ed. 1148, 37 S.Ct. 506 (1917).

This Court should not be reluctant to declare Stone's claim to share in the estate at Williams, Jr.'s expense barred by res judicata and collateral estoppel. The elements of those affirmative defenses clearly exist, as discussed above. When these elements are present, there is simply "no principle of law or equity which sanctions the rejection by a . . . court of the salutary principle of res judicata." *Heiser v. Woodruff*, 327 U.S. 726, 733, 90 L.Ed. 970, 66 S.Ct. 853 (1946); *Accord Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. at 401. As discussed below, Stone could easily have protected herself from the res judicata bar, and should not be excused from the consequences of her calculated litigation decisions.

C. *The Court's Decision Violates Williams, Jr.'s Due Process Rights.* The relief apparently fashioned by this Court's order includes (i) "that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams", (ii) a reopening of the estate and (iii) a remand of this cause "for a full hearing and settlement, in a manner consistent with this opinion." Throughout the administration of the estate until it was closed in 1975, Williams, Jr. was the sole distributee of the assets and proceeds of the estate under binding orders of the circuit court. If the Court's July 5, 1989 opinion actually contemplates payment to Stone of a portion of the monies that were paid to Williams, Jr. on or after August 5, 1985 as part of the "reopening" of the estate, plus a share in future revenues, the decision deprives Williams, Jr. of property rights which vested in him in 1975, at the

latest, and which were *confirmed* to be his sole property by the final judgment of the circuit court on Williams, Jr.'s second amended complaint and Stone's counterclaim. This deprivation of vested property rights – in the estate as well as in the final 1987 circuit court judgments in his favor – came in a proceeding in this Court to which Williams, Jr. was not a party and in which he was not heard. Williams, Jr. was accordingly denied due process of law as guaranteed by section 6 of the Alabama Constitution and the fourteenth amendment to the federal Constitution.

There is more here, however, than a denial of procedural due process. If this Court fails to recognize the binding effect of the circuit court's unappealed decision in favor of Williams, Jr. and against Stone on the question of who has an interest in the estate, and instead takes property from Williams, Jr. and gives it to Stone, the Court will violate Williams' right to substantive due process as well. There is no basis for ignoring the binding, pre-existing lower court orders, and to do so would be to act arbitrarily. As Professor Moore has said in commenting upon the failure of a court to give res judicata effect to binding prior orders:

> The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as res judicata beyond a certain point. The reasons for this conclusion are: *judicial rights were vested by the judgment;* they may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; *just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under*

> *a valid judgment*. And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court. (emphasis added)

1B J. Moore, Moore's Federal Practice, ¶ 0.406 [2].

Ala.R.Civ.P. 19(a) is also designed to insure that persons are not deprived of property rights in litigation to which they are not a party. The rule requires that a person be made a party to a claim if he claims an interest in the subject mater [sic] of the action and is so situated that disposition of the action in his absence may impair or impede his ability to protect that interest. Here, Williams, Jr. had gone his way justifiably believing that he had prevailed in his dispute with Stone over ownership to the estate. Yet, in a proceeding in this Court to which Stone – but not Williams, Jr. – was a party, the Court has *taken from Williams, Jr.* a valuable property interest and given it to Stone. All this was done *without any attempt* to have Williams, Jr. before the Court as Rule 19(a) and the respective due process clauses would require. Of course, had Williams, Jr. been a participant to the appeal, he would have been able to point out there – rather than in these papers for the first time – how Stone's failure to appeal the adverse judgments on the declaratory judgment action and the counterclaim preclude her under res judicata from getting a share of the estate at the expense of Williams, Jr.[4]

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[4] As discussed in the next section, the root problem was in this Court treating the third-party claim as something other than a claim for indemnity. Had it been treated as an impleader

(Continued on following page)

D. *The Court's Decision Ignores The Nature and Purpose Of An Impleader Action.* The only ruling which Stone appealed was the one dismissing her Rule 14 impleader action against Jones, Murray & Stewart, P.C., Irene Smith, and the insurance companies. The province of a Rule 14 claim is, of course, "limited to instances of contractual *indemnification* from a claim or the *indemnification* that flows from circumstances where the defending party is entitled to stand in the shoes of claimant *if the defending party is liable to the claimant.*" 1 Ala. Rules of Civ. Proc. 2nd Ed (Lyons), ¶ 14.1 (emphasis added). As the Committee Comments to the rule observe, "there may be no liability to the original defendant unless and until the original defendant is held liable to the original plaintiff."

Stone clearly intended for her third-party claim to be one for indemnity, notwithstanding the inclusion of a prayer for relief directed to reopening the estate. In Stone's reply brief, written in response to a claim by one of the third-party defendants that hers was not truly an impleader action, she wrote as follows:

> [T]he theory of liability is one of *indemnification* . . . Stone argues that if she is declared not to be an heir [to the Williams estate], it is the fault of the third party defendants. While the

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(Continued from previous page)

action – an action to which Williams, Jr. would logically *not* be a party – it would obviously have not been appropriate to award Stone an interest in the estate. Rather, if she were entitled to relief, it should have been in damages against the third-party defendants who, because Stone lost on the declaratory judgment action, were in turn liable to her. *This* relief could be granted in Williams, Jr.'s absence.

> Original Complaint did not seek damages, there is no doubt that the adverse ruling to Stone did cause her great pecuniary damage; a damage which she rightfully seeks *indemnification* from the third party defendants. The fact that Stone did not appeal the judgment on the Original Complaint in nowise affects her right to seek *indemnification*.

Stone reply brief at 13-14 (emphasis added).[5]

Of course, Stone had to be seeking indemnification, for that is the only province of a third-party action. She filed the action because she recognized the possibility that Williams, Jr. would prevail on his declaratory judgment action (already sanctioned by this Court in the mandamus proceedings) and on her counterclaim. In an effort to protect herself, Stone named third-party defendants who, she asserted, were liable to her if, in fact, Williams, Jr. succeeded in his claim that she had no share in the estate. When Williams, Jr. did prevail on his claim, Stone elected not to appeal that decision, and instead to appeal only with respect to the third-party complaint.

The *critical point* is that the third-party claim *is meaningless* unless one first assumes that Stone has *lost* on the declaratory judgment action filed against her by Williams, Jr. As noted in the Committee Comments, there can be no liability on a Rule 14 claim unless *first* the Rule 14 claimant has *lost* her dispute with the plaintiff.

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[5] By stating "[t]he fact that Stone did not appeal the judgment on the original complaint in nowise affects her right to seek *indemnification*," Stone implicitly recognizes that her failure to appeal on the original complaint *does* preclude her from seeking a portion of the estate at Williams, Jr.'s expense.

Here, in losing her dispute with the plaintiff, Williams, Jr., Stone was adjudicated to have no interest in the estate because Williams, Jr. was reaffirmed as the sole heir. Without this determination first being made, there would be no field of operation for Stone's third-party complaint. Yet this Court, in its July 5, 1989 order, effectively *rescinds* this original determination and awards Stone relief which is directly antagonistic to that determination. In reaching the result it reached – apparently giving Stone an interest in the estate – this Court has treated Stone's appealed claim as something *other* than an impleader action. But in turning it into something else, the Court has ignored the fact that, if the claim is something more than or different from a true third-party claim, Williams, Jr. would have to be a party to it in order to satisfy due process and Rule 19(a). With all respect, the Court has turned the case on its head and has reached a result which is wholly illogical and in complete disregard of established law and practice.

However egregious this Court may find the conduct of the third-party defendants to be, Stone's appeal and the jurisdiction of this Court are limited to claims for *indemnity* arising out of the third-party complaint. The proper relief to be awarded Stone, if any, is damages against the third-party defendants, assuming there is evidence that it was through their wrongdoing that Stone has been denied by the Alabama courts a share in the estate. The only conceivable purpose in reopening the estate would be to calculate the measure of damages suffered by Stone as the result of this Court's determination of fraud by the third-party defendants.

E. *Stone Could Have Protected Her Claim To A Portion Of The Estate.* Stone wished to preserve her right to claim an interest in the estate, she could have done so easily enough. She merely had to take an appeal from the trial court's decision against her on that issue, and not just from its dismissal of the third-party complaint. See 9 J. Moore's Federal Practice ¶ 203.18 (2d ed. 1988). In those circumstances, res judicata would not have attached, all the necessary parties would have been before the Court, and the Court could have reversed any or all of the trial court's rulings. The Court could have reversed the circuit court's rulings in Williams, Jr.'s favor to the extent necessary to allow the relief deemed appropriate by the Court. *See Reed v. Allen*, 286 U.S. at 198. But Stone did *not* appeal generally, and she must live with her calculated choices. That is, a party is *not* excused from the consequences of failing to take an appeal, notwithstanding the harsh result which might follow. *See Federated Dept. Stores v. Moitie*, 452 U.S. at 394 (relitigation of unappealed adverse judgment held barred by res judicata, even though judgment rested on overruled principle and similar actions were successfully appealed). Stone must be required to accept the consequences of her litigation decisions just like every other litigant. And, of course, this Court does not have the right or the power to relieve her of those consequences even though the Court may perceive her decisions to have been imprudent.

F. *Other Issues.* If the Court grants this Petition and agrees to hear Williams, Jr., there are other issues which should be raised. We believe, for example, that the Court erred in its decision that an adoption after the death of the reputed father does not bar the adopted person from

pursuing a judicial determination of paternity for purposes of rights in intestate succession under *Ala. Code* §43-8-48 and §26-17-6(e) (opinion at 3940). We believe the Court has fundamentally misconceived the nature and purpose of the adoption exception and has misconstrued the language of the statutes. These issues – which have far reaching ramifications for the law of intestate succession in Alabama – were briefed and argued in detail to the circuit court, but, of course, Williams, Jr. did not have the opportunity to participate in the proceedings before this Court.

Further consideration of the precedential effect of this Court's ruling would also be wise and appropriate. The relief of reopening the estate for any purpose other than determining the amount of damages recoverable from the third-party defendants is not only improper and unnecessary with respect to the appeal before this Court, but has serious consequences for the jurisprudence of the State of Alabama. As noted in the dissent, such relief calls into question the finality of all judgments entered in this state. Reopening the estate after almost fourteen (14) years for the purpose of a redistribution or reallocation of its assets and the proceeds therefrom calls into question the title of all assets distributed by estates during such time. Indeed, given the lack of adequate parameters for limitation of such relief, the title to all estate distributions in this state would be subject to question if the opinion stands.

V

CONCLUSION

Based upon the foregoing, Williams, Jr. respectfully requests leave to appear before this Court for the purpose of seeking to vacate and modify the opinion consistent with the preceding argument. He requests the opportunity to file such additional papers and briefs as the Court may deem appropriate, and requests the opportunity to be heard in oral argument. Williams, Jr. further requests a stay of the issuance of the certificate of judgment pending further proceedings on this petition.

Respectfully submitted,

/s/ David R. Boyd
DAVID R. BOYD

/s/ Sterling G. Culpepper, Jr.
STERLING G. CULPEPPER, JR.

OF COUNSEL:

BALCH & BINGHAM
Post Office Box 78
Montgomery, Alabama 36101
205/834-6500

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record in this cause by placing same in the United States Mail, postage prepaid, this the 19th day of July, 1989:

David Cromwell Johnson, Esq.
Thomas W. Bowron, II, Esq.
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203

James F. Hampton, Esq.
567 South Hull Street
Montgomery, Alabama 36104

James E. Williams, Esq.
P. O. Box 1267
Montgomery, Alabama 36102

Robert C. Black, Esq.
Hill, Hill, Carter, Franco, Cole & Black
P. O. Box 116
Montgomery, Alabama 36195

/s/ Sterling G. Culpepper, Jr.
OF COUNSEL

APPENDIX H-1

PETITION FOR LETTERS OF ADMINISTRATION

THE STATE OF ALABAMA,) PROBATE
) COURT
MONTGOMERY COUNTY)

(In the Matter of the Estate of
(Hiriam (Hank) Williams,
(Deceased.

To the HON. Wm. W. Hill, Judge of Probate Court, Montgomery County:

The petition of the undersigned, Lillian S. Stone respectfully represents that Hiriam Williams departed this life at Oak Hill, West Virginia on or about the 1st day of January, 1953, leaving no last will and testament; so far as your petitioner knows or believes; and that the said Hiriam Williams was at the time of his death an inhabitant of this County of Montgomery and died seized and possessed of real and personal estate in this State of Alabama consisting chiefly of a cashiers check on The First National Bank of Montgomery in the sum of Four Thousand Dollars ($4,000.00); miscellaneous personal property and jewelry of the approximate value of One Thousand Dollars ($1,000.00), all of said real and personal estate being estimated to be worth about Five Thousand Dollars ($5,000.00) and probably not more; that the names, residence, ages and conditions of the heirs and distributees of the estate of the said decedent, so far as your petitioner knows or believes are as follows, to-wit:

Billie Jean Jones Eshliman Williams, who states she is the widow, over 18 and under 21, residing at 912 Modica Street, Bossier, City Louisiana; Randall Hank Williams, Jr., a minor, approximately 3 1/2 years old, residing with and under the care and custody of his mother, Audrey Williams, Franklin Road, Nashville, Tennessee; Mrs. Irene Williams Smith, sister, over 21 years of age, residing at 199 Smith Place, Apartment 77, Williams Court Apartments, Portsmouth, Virginia; Elonzo H. Williams, father, over 21 years of age, residing at McWilliams, Alabama; and Lillian S. Stone, mother and the petitioner herein, over the age of 21 years, residing at 318 North McDonough Street, Montgomery, Alabama;

that your petitioner, being the mother of said deceased, an inhabitant of this State, above the age twenty-one years, and in no respect disqualified under the law from serving as an administatrix believing that the said estate should be immediately administered, to the end that the said property may be collected and preserved for those who shall appear to have a legal right or interest therein, does, therefore, by virtue of her right under the statute pray that your Honor will grant Letters of Administration on said estate to Lillian S. Stone upon her entering into bond in such sum as is required by the statute, and which security or securities as shall be approved by your Honor.

/s/ Lillian S. Stone
Petitioner.

THE STATE OF ALABAMA,)
)
MONTGOMERY COUNTY)

Lillian S. Stone being duly sworn, deposes and says that the facts averred in the above petition are true.

/s/ Lillian S. Stone
Lillian S. Stone

Subscribed and sworn to before me

this 6 day of January, 1953.

/s/ Robert B. Stewart
Notary Public, Montgomery County.

APPENDIX H-2

AGREEMENT UPON DISTRIBUTIVE SHARE OF ESTATE

WHEREAS, Hiriam Williams, also known as Hank Williams, died intestate on January 1, 1953, and a controversy has arisen as to the residence and domicile of the said Hank Williams at the date of his death, such residence and domicile having been claimed both for the State of Tennessee and for the State of Alabama; and,

WHEREAS, Lillian S. Stone, mother of Hank Williams, has qualified as Administratrix of the Estate of Hiriam (Hank) Williams, Deceased, in the Probate Court of Montgomery County, Alabama, and Third National Bank in Nashville has qualified as Administrator of the Estate of Hiriam (Hank) Williams, Deceased, in the County Court of Davidson County, Tennessee; and,

WHEREAS, Third National Bank in Nashville has filed its petition, requesting that it be allowed to file its final accounting and receive its discharge as such Administrator; and,

WHEREAS, Billie Jean Jones Eshliman Williams, claiming as widow of Hank Williams, deceased, has asserted claims and interests as such widow in the estate of such deceased, which claims and interests have been disputed by and on behalf of other persons having interests in said estate; and,

WHEREAS, Billie Jean Jones Eshliman Williams has filed her petition in the County Court of Davidson County, Tennessee, requesting that she be allowed to qualify and act as Administratrix of the estate of Hiriam Hank Williams, deceased, in Davidson County, Tennessee, upon

the discharge of Third National Bank in Nashville, and Lillian S. Stone has filed her petition in the County Court of Davidson County, Tennessee, asking that she be allowed to qualify and act as Ancillary Administratrix, under an administration proceedings ancillary to the proceedings pending in Montgomery County, Alabama, upon the acceptance of the resignation and discharge of Third Bank in Nashville; and,

WHEREAS, Hiriam (Hank) Williams was survived by a minor son, Randall Hank Williams, now four years of age, who is in the custody and control of his mother, Audrey Mae Williams, but Jack Norman, an attorney at the Nashville Bar, has been appointed and has qualified in the County Court of Davidson County, Tennessee, as guardian of said Randall Hank Williams; and,

WHEREAS, in furtherance of her claim, Billie Jean Jones Eshliman Williams, has filed a suit under the style "Mrs. Hank (nee Billie Jean Jones) Williams vs. Audrey Mae Sheppard, No. 321-696, Civil District Court, Orleans Parish, Louisiana" asserting certain claims as widow of Hank Williams, deceased, and also has filed suit under the style "Mrs. Hank Williams v. Audrey Mae Williams, et al, Civil Docket No. 1691, in the United States District Court for the Middle District of Tennessee, Nashville Division", also making certain claims as widow of Hank Williams, deceased; and,

WHEREAS, the interested parties have agreed upon a satisfactory settlement of the rights and interests of the said Billie Jean Jones Eshliman Williams in the estate of Hank Williams, deceased, as embodied hereinafter, which agreement they desire to be made a matter of record, and,

if necessary, be submitted to any proper court for approval, if approval is required;

NOW, THEREFORE, for and in consideration of the premises, it is agreed by and between Billie Jean Jones Eshliman Williams, for herself, Jack Norman as guardian of Randall Hank Williams, a minor, and Lillian S. Stone, Administratrix of the Estate of Hiriam (Hank) Williams, Deceased, that:

1. Billie Jean Jones Eshliman Williams will withdraw and dismiss her petition in the County Court of Davidson County, Tennessee, seeking to be appointed as Administratrix of the estate of Hank Williams, deceased, and will withdraw any objection to the appointment of Lillian S. Stone as Ancillary Administratrix of the Estate of Hank Williams, Deceased. She also will dismiss her suit under the style "Mrs. Hank (nee Billie Jean Jones) Williams v. Audrey Mae Sheppard, No. 321-696, Civil District Court, Orleans Parish, Louisiana", and will pay the court costs incident to the filing and dismissal of such suit. She also will dismiss her suit under the style "Mrs. Hank Williams v. Audrey Mae Williams, et al, Civil Action File No. 1691, in the United States District Court for the Middle District of Tennessee, Nashville Division", court costs incident to the filing and dismissal of such suit to be paid by the estate of Hiriam (Hank) Williams, deceased.

2. From the first distributable income coming into the hands of Lillian S. Stone, as Administratrix or Ancillary Administratrix, there shall be paid over to Billie Jean Jones Eshliman Williams the sum of Thirty Thousand Dollars ($30,000.00), in cash, which amount the said Billie Jean Jones Eshliman Williams agrees to accept, and does

accept, as her full distributive share as widow, or otherwise, in the estate of Hiriam (Hank) Williams, deceased.

3. Billie Jean Jones Eshliman Williams, in consideration of this agreement and the payment to her of said portion of the distributable income of said estate, does specifically release, discharge and quitclaim all her rights and interests, of any kind, nature, character or degree, now existing or which might hereafter at any time arise as widow, surviving spouse, legal wife, common law wife, or putative wife of Hiriam (Hank) Williams, deceased, in and to any part or portion of the estate of Hiriam (Hank) Williams, deceased, in anything of value owned by Hiriam (Hank) Williams at his death or accruing to his benefit, or for the benefit of his widow, his next-of-kin, his personal representative, or to his estate because of or after his death, in either separate or community property, real, personal or mixed, in being or hereafter to come into being, and all and any claims to homestead, dower, widow's allowance or preferences, usufructs, marital portions, year's support, survivorship or succession rights, or specific exemptions in either specific personalty, general personalty, cash or real property, and including any right to administer the estate of Hiriam (Hank) Williams, deceased, by herself or through others. The foregoing description shall not be in any manner construed as a limitation of the extent of the release of the rights or interests, or claims of rights or interests of Billie Jean Jones Eshliman Williams in the estate of Hiriam (Hank) Williams, deceased, but are illustrative of her general purpose and intent to accept the above mentioned sum as her full share or interest in said estate, and to renounce every claim of any degree or

extent which she might have, or hereafter could assert, in said estate, as the same now exists, or may hereafter be increased in any manner, form or degree, and from any source.

4. Billie Jean Jones Eshliman Williams in like manner does release and quitclaim any and all claims or interest which she may how [sic] or hereafter have or heretofore has asserted in and to the horse "Highlight Merry Boy" (Tennessee Walking Horse Breeders' Association, Registration #481665) which was the property of Hiriam (Hank) Williams at the time of his death, and will give to the Administratrix any information which she has as to the present location of such horse; further releases and quitclaims to the estate her interest in and claim to the saddle used with said horse, and agrees to deliver said saddle to the estate; further releases and quitclaims to the estate her interest in the claim to two boxes of Hiriam (Hank) Williams' songbooks published by Acuff-Rose Publications, or the proceeds thereof, and agrees to deliver to the estate all such books now in her possession; further releases and quitclaims her interest in and claim to three (3) pieces of luggage belonging to Hiriam (Hank) Williams, at his death, and will deliver any such luggage, which is now in her possession to the estate; and further releases and quitclaims to Lillian S. Stone, individually, her interest and claim to one large shipping or storage trunk, the property of Lillian S. Stone, and agrees to return said trunk to Lillian S. Stone. It is not the intention of this instrument to bind any of the parties hereto regarding their rights, if any, under the Old Age and Survivors' insurance regulated by the Federal Government

but all such rights, if any, shall be determined by the proper agent or agencies of the Federal Government.

5. Billie Jean Jones Eshliman Williams will execute the 1952 Income Tax Return, and if necessary the 1953 Income Tax Return, for Hiriam (Hank) Williams as a joint return. She also agrees that she will execute any and all other documents, deeds, instruments, transfers, or bills of sale or assignments as may now or hereafter be necessary or required to carry out the intent and purpose of this agreement.

6. Billie Jean Jones Eshliman Williams has been engaging in the business of making personal appearances for theatrical engagements, appearance by radio and by television, and through other theatrical or entertainment media, under the name "Mrs. Hank Williams". She agrees that it is to the best interests of the estate of Hiriam (Hank) Williams that she discontinue, and she hereby agrees that she will terminate such appearances from and after the 16th day of September, 1953, and that she will discontinue the use of the name "Hank Williams" or "Mrs. Hank Williams" in any manner or form, in any business or professional way, or through any media of advertising, whether by newspaper, radio, television, hand bill, or other form of advertising.

7. By the execution of this instrument, it is intended that after the receipt of such sum of Thirty Thousand Dollars ($30,000.00) said Billie Jean Jones Eshliman Williams will make no further claim, and will have no further claim in and to any property in any form, real,

personal or mixed, contract or chose in action, now constituting or hereafter to constitute in any form a part of the estate of Hiriam (Hank) Williams, deceased.

8. Each of the parties signing this instrument does represent that he or she is more than 21 years of age, and where executed in a representative capacity is authorized to execute this document. It is understood that this contract shall be read and construed as a contract executed under the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties hereto have affixed their respective signatures on this 19 day of August, 1953.

Witnesses to Signatures:

/s/ W. F. Carpenter

/s/ Billie Jean Jones Eshliman Williams
Billie Jean Jones Eshliman Williams

/s/ Lillian S. Stone
Lillian S. Stone, Administratrix and Ancillary Administratrix of the Estate of Hiriam (Hank) Williams, Deceased.

/s/ May Bell Wolfe

/s/ Alice D. Mulloy

/s/ Jack Norman
Jack Norman, Guardian of Randall Hank Williams, a Minor

/s/ W. F. Carpenter

Mrs. Audrey Mae Williams, mother of Randall Hank Williams, also executes this instrument as evidence of her ratification of the terms thereof.

/s/ Audrey Mae Williams
Mrs. Audrey Mae Williams

APPROVED:

/s/ Goodpasture, Carpenter & Dale
Attorney for Billie Jean Jones Eshliman Williams

/s/ Robert B. Stewart
Attorney for Lillian S. Stone, Administratrix, etc.

/s/ Jack Norman
Attorney for Jack Norman, Guardian, etc.

/s/ Carmack Cochran
Attorney for Mrs. Audrey Mae Williams

APPENDIX H-3

IN THE MATTER OF THE ESTATE OF HIRAM [sic] (HANK) WILLIAMS, DECEASED	:	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY Case No. 25056

PETITION FOR ORDER REQUIRING ADMINISTRATRIX TO MAKE FINAL SETTLEMENT

Come your petitioners, Audrey Mae Williams, as the Mother, Custodian and Guardian of Randall Hank Williams, a minor over the age of fourteen years, and also the said Randall Hank Williams, a minor by and through Audrey Mae Williams, as his Mother, Custodian and Guardian, and respectfully represent and show unto the Court as follows:

1. That your petitioner Audrey Mae Williams is over the age of twenty-one years and resides in Nashville, Tennessee; that she is the mother of the minor petitioner, Randall Hank Williams, who is over the age of fourteen years; that she now has, and has had since her divorce from Hiram [sic] (Hank) Williams, the father of said minor petitioner, which decree of divorce was rendered on July 10, 1952, the legal custody of said minor, Randall Hank Williams; that she and the said Randall Hank Williams both now reside, as aforesaid, in Nashville, Davidson County, Tennessee.

2. That your petitioner Randall Hank Williams became fourteen years of age on May 26, 1963; that, upon his arrival at the age of fourteen years, he exercised his right and privilege, pursuant to the statutes and laws of the State of Alabama, to designate and nominate his

mother, the said Audrey Mae Williams, as Guardian of his estate; that your petitioner Audrey Mae Williams has been heretofore appointed, and has qualified, and is now acting as Guardian of the person and estate of the said Randall Hank Williams by by decree of the Chancery Court, Davidson County, Tennessee, in that certain cause entitled "Audrey Mae Williams vs Randall Hank Williams," Rule No. 84663, decree entered in Minute Book 189, at Page 324; that she has executed and filed in said cause, pursuant to the instructions of said Court, a good and sufficient bond with The Travelers Indemnity Company as surety, in the penal sum of Six Hundred Thousand ($600,000) Dollars, which is in excess of the value of the assets constituting the Guardianship Estate of said minor according to the last report filed by the respondent Irene W. Smith, as his Guardian by appointment of the Probate Court of Montgomery County, Alabama.

3. That the Guardianship Estate of the said Randall Hank Williams, a minor, is the sole distributee of the administration of the estate of his deceased father, Hiram [sic] (Hank) Williams; that the respondent Irene W. Smith has been heretofore appointed and has been serving as Administratrix of the Estate of Hiram [sic] (Hank) Williams, Deceased; that said Administratrix is a resident of the State of Texas; that petitioners are informed, and upon such information and belief state and aver, that all debts of said estate have been paid and that there is no longer any need or occasion to continue the administration of said estate; that any further activities in connection with the Estate of Hiram [sic] (Hank) Williams, Deceased, which may be necessary, can be equally as well and much more economically performed by the Guardian

of the estate and person of the said Randall Hank Williams, who, as hereinabove averred, is the sole distributee of the administration of the estate of his father, the said Hiram [sic] (Hank) Williams; that said administration should now be settled and terminated and said respondent Irene W. Smith, as such Administratrix, should be required to make final settlement of said estate and to transfer the assets and interests therein of the said Randall Hank Williams to your petitioner Audrey Mae Williams, as his Guardian.

4. That your petitioner, Randall Hank Williams, is the sole and only distributee of the estate of his father, but the administrator has suggested that there are, or might be, certain other persons who have, or may claim to have, an interest in said estate. That the best interests of the estate of Hiram [sic] (Hank) Williams, and those persons beneficially interested therein, will be served by said estate being terminated at the earliest practical date.

5. That the pendency of said estate has resulted in excessive taxes, excessive costs of administration which necessarily result from the amount of time required of counsel for the administrator in caring for said estate, undue complications in the relationship between the petitioners hereunder and certain recording and publishing companies who had contracts with the decedent at the time of death that still yield certain income to the estate, and has and does continue to unduly interfere with the planning of the future career and estate of petitioner, Randall Hank Williams.

6. That counsel for the administrator has stated that he had been informed and believes that there is a possibility of certain changes in the Copyright Laws of the

United States which, if made, would necessitate the existence of an administrator in connection with the renewal of certain copyrights belonging to estate; should such statutory amendment be made, all of which is doubtful, this estate could be reopened, or a new administrator could be appointed, and the mere pendency of a possible legislative enactment, which may not occur, neither is nor should be a valid reason for maintaining this estate open.

7. Petitioners offer to do equity in the matter, as they may be directed by this Court.

WHEREFORE, THE PREMISES CONSIDERED, petitioners pray that Irene W. Smith, as such Administratrix, be made a party to this cause by proper process and that copy of this petition and of the date set for the hearing of same, be served upon the said Irene W. Smith, as such Administratrix, or upon Robert B. Stewart, Esq., her counsel of record; and, further, that this Court will, upon the hearing of this petition, order and direct that the said Irene W. Smith, as Administratrix of the Estate of Hiram [sic] (Hank) Williams, shall forthwith make out and file a complete statement and accounting of her actions and transactions as Administratrix of the Estate of Hiram [sic] (Hank) Williams, Deceased, and that she shall forthwith make distribution of the assets of said estate to the lawful distributee, and, further, that this Court will grant such other, further and different relief as in equity and good conscience petitioners may be entitled, as they will ever pray, etc.

/s/ Audrey Williams
As Mother, Custodian and
Guardian of Randall
Hank Williams, a Minor

/s/ Randall Hank Williams
RANDALL HANK WILLIAMS,
A Minor

PETITIONERS

STATE OF TENNESSEE
DAVIDSON COUNTY

BEFORE ME, Mary Claire Rhodes, a Notary Public in and for said County in said State, personally appeared Audrey Mae Williams, known to me, who, being by me first duly sworn, on oath deposes and says: that the facts averred in the foregoing petition are true and correct to the best of her knowledge, information and belief.

/s/ Mary Claire Rhodes

SWORN to and subscribed before me this 7th day of March, 1967.

/s/ Mary Claire Rhodes
Notary Public
Davidson County, Tennessee
My Commission Expires July 27, 1969

ATTORNEYS FOR PETITIONERS:

W.D. PARTLOW, JR.
TUSCALOOSA, ALABAMA
and
J. M. WILLIAMSON
P.O. BOX 64
URBANA, ILLINOIS
by /s/ W. D. Partlow, Jr.

APPENDIX H-4

IN THE MATTER OF	:	IN THE CIRCUIT COURT
THE ESTATE OF HIRIAM:		OF MONTGOMERY
"HANK" WILLIAMS,	:	COUNTY, ALABAMA
DECEASED	:	IN EQUITY, NO. 25056

ANSWER

Now comes Irene W. Smith, as Administratrix of the Estate of Hiriam "Hank" Williams, and for answer to the petition of Audrey Mae Williams, seeking a final settlement, says as follows:

1. She admits the jurisdictional allegations of this paragraph and denies all other allegations.

2. She denies the allegations of paragraph 2.

3. She admits that Irene W. Smith has been appointed and is serving as administratrix of the Estate of Hiriam "Hank" Williams and denies all other allegations of this paragraph.

4. She denies the allegations of this paragraph as they are stated and for further answer thereto states that she believes Randall Hank Williams is the sole heir of his father, Hiriam "Hank" Williams, and entitled to all the proceeds of this estate; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate, which rights should be judicially determined before the estate can be closed and its assets distributed. For the purpose of determining such rights, a guardian ad litem should be appointed to represent the interest of any and all unknown minors who may have or claim any interest in said estate.

5. She denies the allegations of paragraph 5.

6. She admits that certain revisions in the copyright laws of the United States are being considered by Congress which may affect or create additional renewal rights or vest in the administrator other rights and that for this reason the administration should remain open until these revisions are enacted. This problem will not affect the distribution of assets after the beneficiaries are determined by the Court.

7. For further answer to that aspect of the Complaint seeking to have the assets of the estate paid to Petitioner as Tennessee guardian for the minor, she says that she is the guardian of said minor under appointment of this Court and is presently administering substantial funds of the minor which were previously distributed from the estate to the guardianship; as such she is under bond set and approved by this Court and makes an annual accounting to this Court. If the estate should be closed, any funds of the estate should be turned over to the Alabama guardian in order that the actions of such guardian may be supervised by this Court and not removed from the state and delivered over to the Tennessee guardian.

The Petitioner as Tennessee guardian has filed no accounting with the Chancery Court at Nashville until required by that Court to do so. She has now filed an accounting for 1964, 1965 and 1966 which shows that she has received as such guardian $441,236.12 and spent $447,366.01 and, therefore, is short in her accounting by some $6,129.89. Her accounting has not been heard or approved by the Court. The information presently available on the actions of Petitioner as Tennessee guardian

indicate she is unfit to administer the funds which she has received and is not a fit and suitable person to administer the funds of the Williams Estate which she now asks this Court to turn over to her.

The necessity forclosing this estate and the question of paying the assets over to Petitioner as Tennessee guardian were before this Court in 1963, when Petitioner filed a similar bill making substantially the same allegations. On her failure to answer interrogatories propounded to her for more than a year after this Court required answers to be made, the Court dismissed her petition. Under the provisions of Equity Rule 75 this order was a dismissal on the merits; therefore, the only question properly before the Court is to determine the beneficiaries and their interests in said estate. When this is done, the assets of the estate can then be paid over to the Alabama guardian. The Petitioner has filed with Court a petition to close the Alabama guardianship and to pay over its assets to her as Tennessee guardian. This petition is pending and will be determined by the Court in due time. The Petitioner, through her attorneys, has indicated that she will request an early hearing on the issues presented in the estate pleadings, and when they are determined, she will then proceed with the issues presented in the guardianship pleadings.

JONES, MURRAY, STEWART & VARNER

/s/ Robert B. Stewart
Attorneys for Irene W. Smith

I hereby certify that I have served copies of the foregoing Answer on W. D. Partlow, Jr. and J. M. Williamson, Attorneys for Audrey Mae Williams, on Richard H. Frank, Jr. and Maury D. Smith, Attorneys for Fred Rose Music, Inc., and on J. M. Weinstein, Attorney for Metro-Goldwyn-Mayer, Inc., by mailing the same, postage prepaid, to them at their respective offices on this the 14 day of April, 1967.

/s/ Robert B. Stewart
Of Counsel for Irene W. Smith

APPENDIX H-5

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS, Deceased	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY NO. 25056

ANSWER OF GUARDIAN AD LITEM

Comes now, Drayton N. Hamilton, guardian ad litem for any person or persons having an interest in or claim to any property or assets which are a part of the Estate of Hiriam "Hank" Williams, deceased, and being administered by or subject to the control of this Court, who may be minors under the age of twenty-one years and who are not parties hereto or represented by counsel, and has heretofore accepted the appointment as guardian ad litem in this cause and now for answer says:

1. That the guardian ad litem avers and shows unto this Honorable Court that he has made a diligent search for any heretofore unknown persons who are entitled to share in the estate of the decedent, Hiriam "Hank" Williams, and has made inquiries of numerous persons, relatives, and otherwise, in the State of Alabama and outside the State of Alabama, and that the only person this guardian ad litem has been able to locate and determine as such "unknown" person who is entitled to share in the Estate of Hiriam "Hank" Williams is that person hereinafter referred to in Paragraph 11 of this answer.

2. The guardian ad litem neither admits nor denies the allegations of Paragraph 1 of the petition.

3. The guardian ad litem neither admits nor denies the allegations of Paragraph 2 of the petition.

4. The guardian ad litem denies each and every allegation of Paragraph 3 of the petition.

5. The guardian ad litem denies each and every allegation of Paragraph 4 of the petition.

6. The guardian ad litem neither admits nor denies the allegations of Paragraph 5 of the petition.

7. The guardian ad litem neither admits nor denies the allegations of Paragraph 6 of the petition.

8. The guardian ad litem neither admits nor denies the allegations of Paragraph 7 of the petition.

9. The guardian ad litem neither admits nor denies the allegations of Paragraph 8 of the petition except any allegation in said Paragraph 8 which infers that Randall Hank Williams is the only person entitled to share in the estate of the decedent, Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

10. For further answer to the petition, as amended, the guardian ad litem says and affirmatively alleges that there is in the file of this cause document carrying file No. 204, an agreement between decedent, Hiriam "Hank" Williams, and Bobbie W. Jett; that said document was filed for record in the Probate Court of Montgomery County, Alabama, under order of that court dated August 18, 1967; and your guardian ad litem affirmatively alleges that there was a girl child born to the said Bobbie W. Jett (named in said document and the signatory thereof) on or about, to-wit, January 6, 1953, in St. Margaret's Hospital, Montgomery, Alabama; that said child is living and is the

daughter of the decedent, Hiriam "Hank" Williams, and as such entitled to share equally in the estate with any other child or children of said decedent.

11. That the guardian ad litem further affirmatively alleges that the filing requirements of the statutes of the State of Alabama, with respect to legitimation of children, have been complied with and alleges that the said child born to the said Bobbie W. Jett is the legitimate heir of the decedent, Hiriam "Hank" Williams; and in support of such allegation your guardian ad litem attaches hereto and makes a part hereof, as if fully set out herein at this place, a certified copy of the order of the Probate Court dated August 18, 1967, made on proceedings had in said Court, which proceedings are now on file in this Court; and the guardian ad litem avers that said child is entitled to share in the estate of the decedent, Hiriam "Hank" Williams.

12. That your guardian ad litem affirmatively alleges, additionally, in the event this Honorable Court determines that there has been a failure or defect in the compliance with the statutes of the State of Alabama with respect to the legitimation of said child of the decedent, that said child of the decedent is the illegitimate daughter of the decedent and as such is entitled to share in the estate with any other child of the said decedent.

13. That your guardian ad litem further affirmatively alleges that said child of Bobbie W. Jett and the decedent is the illegitimate daughter of the decedent and as such is entitled to share equally with any other child or children in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable

or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the estate in any tunes, songs, music, compositions, or other materials belonging to the estate, or heretofore assigned by the estate, or hereafter assigned or transferred by the estate, and avers in support of this allegation that the United States Copyright Laws control the distribution of any such funds from said royalties on said enumerated materials and avers that rights under such laws present a federal question and that this Honorable Court is bound and must give effect to said statutes and the decisions of the federal courts thereunder; that the proof in this case will affirmatively show that the estate does enjoy revenues from such sources enumerated which will be or should be accounted for in this proceeding and cause.

WHEREFORE, THESE PREMISES CONSIDERED, the guardian ad litem respectfully prays:

I. That upon hearing hereof the Court will render appropriate decree or decrees, orders or judgments;

(A.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and was recognized as such by him, and duly and legally legitimated according to the statutes and laws of the State of Alabama, and is entitled to share in the estate of the decedent.

(B.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and as such is entitled to share equally

in the estate with any other child or children of the said decedent.

(C.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in the estate of the decedent, and in particular, any part of the estate attributable to or resulting from royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the estate in any tunes, songs, music, compositions or other materials belonging to the estate, or heretofore assigned by the estate or hereafter assigned or transferred by the estate.

(D.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights, or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(E.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of the decedent, Hiriam "Hank" Williams, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(F.) And your guardian ad litem further prays for such other, further, different or general relief to which the above referred to girl child may be entitled in the premises and to which the Court may seem mete and just and your guardian ad litem will ever pray, etc.

This the 12th day of September, 1967.

/s/ Drayton N. Hamilton,
Drayton N. Hamilton, as guardian ad litem for any person or persons having an interest in or claim to any property or assets which are a part of the Estate of Hiriam "Hank" Williams, deceased, and being administered by or subject to the control of this Court, who may be minors under the age of twenty-one years and who are not parties hereto or represented by counsel.

I hereby certify that I have, today, this the 12th day of September, 1967, mailed a copy of the foregoing answer by U.S. Mail, first class, prepaid, to the following attorneys of record:

1. Joseph M. Williamson, Esq., P.O. Box Drawer 64, Urbana, Illinois
2. Messrs. Jones, Murray, Stewart & Varner, First National Bank Bldg., Montgomery, Ala.
3. Messrs. Orenstein, Arrow and Lourie, 119 West 57th Street, New York, N.Y. 10019
4. Messrs. Bardsdale, Whalley, Leaver, Gilbert & Frank, Nashville Bank & Trust Bldg. Nashville, Tennessee
5. Messrs. Goodwyn, Smith and Bowman 325 Bell Building, Montgomery, Ala. 36104
6. William D. Partlow, Jr., Esquire 602 25th Avenue, Tuscaloosa, Ala.

/s/ Drayton N. Hamilton,
Drayton N. Hamilton,
guardian ad
litem

APPENDIX H-6

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS,	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY. Case) No. 25056

ORDER

This matter now coming on for hearing is submitted on the amended petition filed by Audrey M. Williams and Randall Williams, the Answer of Irene W. Smith, as Administratrix of the Estate of Hiriam Hank Williams, to the Petition as last amended, the Acceptance of his appointment and the Answer of the Guardian ad Litem to the Petition as last amended, the testimony as noted by the Register and stipulations entered into by the parties through their attorneys of record.

Counsel for the Williams Estate has advised the Court that he does not insist upon his motion to require security for costs and said motion should, therefore, be overruled.

The Court has carefully considered the testimony and the evidence presented by the parties in this case and helpful briefs filed by their attorneys.

The principal issue raised by the Petition as last amended and by the Answer of the Administratrix is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been ligitimated under Alabama's statutory procedure. The Guardian ad Litem has

also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams, and as such may have certain rights under the Federal Copyright Statutes. The Court does not believe it is necessary to make this latter determination.

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams.

The Petitioners and the Administratrix recognize in their pleadings that this estate should remain open because there are or may be unliquidated accounts due the estate, and pending amendments to the Federal Copyright laws make further administration advisable. This Court is, therefore, of the opinion that the Administration of this estate should continue, as it has in the past, under the supervision of this Court.

All issues presented by the pleadings in this case and not specifically decided should, therefore, be reserved.

The Court has considered the time spent and the expenses incurred by the Guardian ad Litem and is of the opinion that he is entitled to a reasonable fee and to be reimbursed for his actual expenses, and that said fee and expenses should be paid by the Estate.

IT IS, THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

1. That the motion of Irene W. Smith as Administratrix to require the Petitioner to furnish security for costs is hereby overruled.

2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

3. That the fee of the Guardian ad Litem, Drayton N. Hamilton, is fixed at Two Thousand Dollars ($2,000.00), which includes his expenses through the date of trial.

4. All other matters are reserved.

5. The costs of these proceedings, including the fee and expenses of the Guardian ad Litem, are taxed against the Estate of Hiriam Hank Williams, for which execution may issue.

Done this 1 day of Dec, 1967.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX H-7

PIERRE PELHAM
LAWYER
919 DAUPHIN STREET
MOBILE, ALABAMA

TELEPHONE 438-9784

May 15, 1968

P.O. BOX 291
MOBILE, ALABAMA 36601

Drayton N. Hamilton, Esquire
Hinson & Hamilton
26 South Perry Street
Montgomery, Alabama 36104

Dear Drayton:

I have discussed your letter of May 8, 1968 with Mr. and Mrs. Wayne Deupree; and it is their feeling, first, that the possibility of their daughter realizing anything from an appeal of those cases in which you represent her as guardian ad litem is remote and, second, that in any event the embarrassing publicity which would result from an appeal would be far more damaging than any benefit that could result therefrom. As the attorney for Mr. and Mrs. Deupree, I concur in their conclusions, and we, therefore, request that you not appeal the cases discussed in your letter of May 8, 1968.

With kindest personal regards, I am

Sincerely,

/s/ Pierre
Pierre Pelham

PP/jas

PIERRE PELHAM
LAWYER
919 DAUPHIN STREET
MOBILE, ALABAMA

TELEPHONE 438-9784

May 27, 1968

P.O. BOX 291
MOBILE, ALABAMA 36601

Judge Richard P. Emmet
Montgomery County Circuit Court
Montgomery, Alabama

Re: Cathy Louise Deupree, minor

Dear Judge Emmet:

In reply to Mr. Hamilton's letter of May 20, 1968, it is the position of Mr. and Mrs. Wayne Deupree, first, that the possibility of their daughter realizing anything from an appeal is remote and, second, that in any event the publicity which would result therefrom would be far more damaging than any benefit she might derive. Mr. and Mrs. Deupree are, therefore, opposed to Mr. Hamilton's taking an appeal in this matter.

With kindest personal regards, I am

Sincerely,

/s/ Pierre Pelham
Pierre Pelham

PP/jas

APPENDIX H-8

IN THE MATTER OF THE ESTATE OF HIRIAM HANK WILLIAMS,	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY CASE) #25056

PETITION SEEKING CLARIFICATION OF STATUS AND INSTRUCTIONS

Comes now, D. N. Hamilton, who served as guardian ad litem, and appeared in the above styled cause as such in the litigation in September, 1967, in this cause, and represents and shows unto Your Honor as follows:

1. That this Honorable Court entered a decree in this caus : on December 1, 1967, and that under the rules an appeal must be filed within six (6) months from said date.

2. That in the judgment and opinion of your petitioner an appeal should be filed in this cause for the following reasons:

(a) The share of the ward, if supportable, is and would be extremely valuable from a pecuniary viewpoint.

(b) In view of the value of a present share in the estate and the potential earnings of assets of the estate, every means should be exhausted to legally establish the interest of the ward.

(c) That there is a probability of a change in the substantive law of this state with respect to illegitimates, which would be of inestimable value to the ward, when

the United States Supreme Court decides the case reported as *Levy, etc. v. State of Louisiana through the Charity Hospital of Louisiana at New Orleans, Board of Administrators, et al,* 192 So.2d 193, 193 So.2d 530, appealed and argued in the U.S. Supreme Court during the October Term, 1967, being Case No. 508, and predictably to be decided prior to the summer adjournment of the said Supreme Court.

(d) The probability of an early change in the copyright laws of the United States which would be of value and benefit to the ward at some reasonably foreseeable date in the future and, therefore, the rights of the ward should be kept alive. (The U.S. House of Representatives has already passed a bill containing the following definition: "A person's 'children' are his immediate offspring, whether legitimate or not, and any children legally adopted by him," and the Senate has a bill (with the same definition) under consideration).

3. Your petitioner respectfully suggests to Your Honor that the Alabama Supreme Court should, on appeal review the conclusions reached by Your Honor with reference to the applicability of Title 27, Section 11, to the facts adduced during the trial; that the said Court should be requested to make a finding as to the relationship of the ward to the decedent; that the said Court should evaluate the decision of the Levy case, when issued, with reference to the facts of this cause as to the rights of the ward.

4. Your petitioner, in all candor, advises Your Honor that the parents of the ward, through counsel, have requested that no appeal be filed or pursued in this cause.

5. Your petitioner further respectfully suggests that should an appeal be decided upon as desirable or necessary and if pursued either by your petitioner or by other counsel appointed by this Honorable Court that this Court direct and order the court reporter, Register, solicitors of record on appeal, to agree upon an abridgement of the record and transcript so as to insure and secure the privacy of the ward.

6. Your petitioner further advises this Honorable Court that the Register has suggested that a cash deposit in a minimum amount of $500.00 be made as a condition precedent to the preparation of the transcript in this cause.

THESE PREMISES CONSIDERED, your petitioner prays that Your Honor will clarify the status of, advise with, and give instructions to your petitioner in and on the following, to-wit:

1. The status and obligation of your petitioner to the ward in this cause at the present time.

2. The judgment and advice of this Court as to the necessity of pursuing an appeal in this cause.

3. The measures that should be taken to abridge the record so as to insure and secure the privacy of the ward. (The objections of the parents could likely be met if they were reassured on this phase of an appeal).

4. The measures that could be taken to reduce the cost of preparation of the transcript and the bond.

5. The reimbursement of counsel for expenses and the possibility of payment for services rendered on appeal and the source of such funds.

6. The obligations, if any, of your petitioner to advise with the solicitor for the estate with reference to the appeal and the obligations, if any, of your petitioner to advise with other solicitors connected with the initial litigation.

YOUR PETITIONER RESPECTFULLY PRAYS for any other advice and instructions Your Honor deems mete and proper in this cause.

Respectfully submitted,

/s/ D. N. Hamilton
D. N. Hamilton

APPENDIX H-9

IN THE MATTER OF THE ESTATE OF HIRIAM HANK WILLIAMS	)	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY CASE NO. 25056

ORDER

This matter now coming on for decision on "Petition seeking Clarification of Status and Instructions" filed by D. N. Hamilton, who served as guardian ad litem and appeared in the above styled cause in the hearing in September, 1967, which resulted in the Order of this Court dated December 1, 1967, and the Court understanding the allegations and prayer of the said petition and having considered same is of the opinion that no appeal should be filed by the petitioner; it is, therefore,

CONSIDERED, ORDERED and DECREED by the Court:

1. That no appeal be filed by the petitioner, D.N. Hamilton, Esquire, in this cause.

DONE, this the 28th day of May, 1968.

/s/ Richard P. Emmet
Judge

APPENDIX H-10

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS, DECEASED.	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY. CASE) NO. 25056)

REQUEST FOR INSTRUCTIONS

Now comes Robert B. Stewart as Administrator of the Estate of Hiriam "Hank" Williams, and for answer to the Petition of Randall Williams seeking a distribution of the cash assets of said estate, admits the allegations of the Petition.

For further answer the Administrator says that there are certain contingencies of which the Court is aware which could result in claims against the Estate, which could not be paid if this distribution is made. It is in the best interest of the Estate and is necessary for the protection of the Administrator that all of the facts relating to such contingency be fully made known to the Court before any order is issued authorizing further distribution of assets from this Estate. The Administrator is of the opinion that, before the requested distribution is made, Gulf American Fire & Casualty Company as surety on the Administrator's bond should be furnished with a copy of the Petition and of this Answer and should be represented by its attorneys upon the hearing of this Petition.

/s/ RBS

Robert B. Stewart, as Administrator of the Estate of Hiriam "Hank" Williams

Of Counsel:

JONES, MURRAY, STEWART & YARBROUGH
UNION BANK BUILDING
MONTGOMERY, ALABAMA 36104

APPENDIX H-11

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS, DECEASED.	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY. CASE) NO. 25056)

ORDER

Robert B. Stewart as Administrator of the Estate of Hiriam "Hank" Williams, has petitioned the Court for instructions relating to distribution of assets, and Randall Williams has petitioned the Court for distribution of the available cash assets in his father's estate. At the request of the Administrator, Gulf American Fire & Casualty Company, as surety on the Administrator's bond, has been given notice of both petitions and through its attorney, James W. Garrett, has accepted service of said petitions. The Court has considered both petitions and has conferred with the Administrator and with the attorney for the surety on his bond. This Court is well aware of the contingincies referred to in the Administrator's petition asking for instructions. This matter was previously presented to the Court at an earlier hearing and the rights of any parties, other than Randall Williams, had been ruled on in earlier orders of this Court. Since the Court's last ruling, the Supreme Court of the United States in considering a similar problem again reaffirmed the earlier opinion of this Court and the long-standing case law of the State of Alabama. (*Labine v. Vincent*, 401 U.S. 532, 28 L.Ed. 2d 288, Rehearing denied, 402 U.S. 990, 29 L.Ed 2d 156). It

is the considered opinion of the Court that Randall Williams is the sole heir of his father, Hiriam "Hank" Williams, and that the distribution which he requested may be made by the administrator.

DONE this 22 day of Dec., 1972.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX H-12

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS, Deceased	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY.) NO. 25056

ORDER

The request of Robert B. Stewart, as Administrator of the Estate of Hiriam "Hank" Williams for instructions, having been considered by the Court, and the Court being of the opinion that the request of the Administrator, as set out in the petition, is in the best interest of the estate and of the beneficiary, Randall Hank Williams;

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that Robert B. Stewart, as Administrator de bonis non of the Estate of Hiriam "Hank" Williams, be and he is hereby authorized to distribute and assign to Randall Hank Williams all rights to receive royalties, due or to become due after December 31, 1974, under the terms and conditions of any contract between Acuff-Rose Publications, Inc., its successors and assigns, and Hiriam "Hank" Williams, and between Acuff-Rose Publications, Inc., Milene Music, Inc. and Fred Rose Music, Inc., their successors and assigns, and the Estate of Hiriam "Hank" Williams.

DONE this 7 day of February, 1975.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX H-13

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

ASSIGNMENT

The undersigned, Robert B. Stewart, as Administrator de bonis non of the Estate of Hiriam "Hank" Williams, deceased, does hereby assign and transfer to Randall Hank Williams all royalties due or to become due after December 31, 1974, under the terms and conditions of any contract between Acuff-Rose Publications, Inc., its successors and assigns, and Hiriam "Hank" Williams, and any contracts between Acuff-Rose Publications, Inc., Milene Music, Inc., and Fred Rose Music, Inc., their successors and assigns and the Estate of Hiriam "Hank" Williams.

All royalties due under the contracts hereinabove described shall be paid to Randall Hank Williams and mailed to him in care of First State Bank of Cullman, Cullman, Alabama, 35055.

This assignment is executed in compliance with an Order of the Circuit Court of Montgomery County, Alabama, made and entered on the 7th day of February, 1975, authorizing the Administrator to distribute to Randall Hank Williams the above referred to contracts and rights accruing thereunder. A certified copy of said Order is attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 18 day of February, 1975.

/s/ Robert B. Stewart (L.S.)
Robert B. Stewart,
Administrator de
bonis non of the
Estate of Hiriam
"Hank" Williams

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

I, Alice H. Ward, a Notary Public in and for said County in said State do hereby certify that Robert B. Stewart, whose name as Administrator de bonis non of the Estate of Hiriam "Hank" Williams, deceased, is signed to the foregoing Assignment, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he in his capacity as such Administrator and with full authority executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this the 18 day of February, 1975.

(NOTARIAL SEAL)

/s/ Alice H. Ward
Notary Public, Montgomery
County, Alabama.

My Commission Expires:

February 19, 1978

APPENDIX H-14

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS, Deceased	)))))))	IN THE CIRCUIT COURT MONTGOMERY COUNTY, ALABAMA IN EQUITY. NO. 25056

DECREE APPROVING FINAL SETTLEMENT

This matter coming on to be heard, comes before the Court on the Petition of the Administrator for final settlement and discharge of the Administrator and the surety on his bond, and upon the acceptance, waiver and receipt of Randall Hank Williams, the sole beneficiary of this estate.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court:

1. That Robert B. Stewart as Administrator de bonis non and Gulf American Fire and Casualty Insurance Company, as surety his bond, be and they are hereby discharged.

2. That all costs of this proceeding be taxed by the Register and paid by the Administrator, for which execution may issue.

DONE this 14 day of July, 1975.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX I-1

IN THE MATTER OF RANDALL HANK WILLIAMS, A MINOR	)	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY NO. 27960

ORDER

This matter was submitted upon the petition of Irene Smith seeking instructions from the Court with regard to a proposed contract between Irene Smith as Guardian for Randall Hank Williams, and Fred Rose Music, Inc.; the appointment of Fontaine M. Howard as Guardian Ad Litem for the minor, Randall Hank Williams, and his acceptance and denial of the allegations of the petition; the proposed contract between Fred Rose Music, Inc. and Irene Smith as guardian for Randall Hank Williams; the testimony of Frank Walker, Harold Orenstein and Harry Fox taken pursuant to order of the Court; and argument of counsel for petitioner and the guardian ad litem.

The Court is of the opinion and finds that Irene Smith is the duly appointed and acting guardian of the Estate of Randall Hank Williams, a minor; that said minor has certain contingent future interests in the United States renewal term of copyright in and to all of those musical compositions written or composed by his father, Hiriam "Hank" Williams; that Fred Rose Music, Inc. and its associated companies, Milene Music, Inc. and Acuff-Rose Publications, Inc. own the copyrights to all of the music written or composed by the late Hiriam "Hank" Williams,

and have successfully exploited said copyrights during his lifetime and since his death; that it is in the best interest of the minor, Randall Hank Williams, to permit the present owners of the copyrights to renew them as the term of each expires and to contract therefor through his guardian at this time.

The Court is of the opinion and finds that the offer of Fred Rose Music, Inc. as contained in the contract now before the Court as petitioner's Exhibit "A" is reasonable and that it is in the best interest of the minor that said contract be executed at this time by his guardian.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that Irene Smith be and she is hereby authorized to execute a contract with Fred Rose Music, Inc. on behalf of the minor, Randall Hank Williams, for the sale of the minor's contingent future interests in the United States renewal term of copyrights in and to all of the musical compositions written or composed by Hiriam "Hank" Williams according to the terms and conditions of the contract heretofore exhibited to the Court in support of the petition for instructions.

DONE this 19th day of March, 1963.

/s/ Charles Ball
Circuit Judge

APPENDIX I-2

IN THE MATTER	:	IN THE
OF THE	:	CIRCUIT COURT
GUARDIANSHIP	:	OF
ESTATE OF	:	MONTGOMERY
RANDALL	:	COUNTY, ALABAMA,
HANK WILLIAMS,	:	IN EQUITY
A MINOR	:	Case No. 27960

PETITION TO VACATE DECREE OF MARCH 19, 1963
AND FOR ORDER REQUIRING
GUARDIAN TO MAKE ACCOUNTING
AND TRANSFER ASSETS

Come your petitioners, Audrey Mae Williams, as the Mother, Custodian and Guardian of Randall Hank Williams, a minor over the age of fourteen years, and also the said Randall Hank Williams, a minor individually and by and through Audrey Mae Williams, as his Mother, Custodian and Guardian, and respectfully represent and show unto the Court as follows:

1. That your petitioner Audrey Mae Williams is over the age of twenty-one years and resides in Nashville, Tennessee; that she is the mother of the minor petitioner, Randall Hank Williams, who is over the age of fourteen years; that she now has, and has had since her divorce from Hiram (Hank) Williams, the father of said minor petitioner, which decree of divorce was rendered on July 10, 1952, the legal custody of said minor, Randall Hank Williams; that she and the said Randall Hank Williams both now reside, as aforesaid, in Nashville, Davidson County, Tennessee.

2. That petitioner Randall Hank Williams became fourteen years of age on May 26, 1963; that, upon his

arrival at the age of fourteen years, he exercised his right and privilege, pursuant to the statutes and laws of the State of Alabama, to designate and nominate his mother, the said Audrey Mae Williams, as Guardian of his estate; that your petitioner Audrey Mae Williams has been heretofore appointed, and has qualified, and is now acting as Guardian of the person and estate of the said Randall Hank Williams by decree of the Chancery Court, Davidson County, Tennessee, in that certain cause entitled "Audrey Mae Williams vs Randall Hank Williams," Rule No. 84463, decree entered in Minute Book 189, at Page 324; that she has executed and filed in said cause, pursuant to the instructions of the said Court, a good and sufficient bond with The Travelers Indemnity Company as surety, in the penal sum of Six Hundred Thousand ($600,000) Dollars, which is in effect at this time and is in excess of the value of the assets constituting the Guardianship Estate of said minor according to the last report filed by the respondent Irene W. Smith as his Guardian by appointment of the Probate Court of Montgomery County, Alabama, the removal of the assets of which said Guardianship Estate to the State of Tennessee is herein sought.

3. That the respondent Irene W. Smith has been heretofore appointed and has been serving in Texas, but subject to the jurisdiction of the Alabama courts, as Guardian of Randall Hank Williams; that she is a resident of the State of Texas, where she has resided for many years; that she has seen said minor only briefly on one occasion, and had no personal contact with him during the past twelve or thirteen years; that she has shown no personal interest in him; that she draws and has received annually large fees for serving as such Guardian; that she

has employed counsel to represent her as such Guardian, who has also received substantial fees; that the expense incident to the administration of said Guardianship Estate will be substantially reduced by the removal of same to the place of residence of petitioners, inasmuch as petitioner Audrey Mae Williams, who, as heretofore averred, has been appointed as Guardian of Randall Hank Williams by decree of the Chancery Court of Davidson County, Tennessee, has agreed to serve as such Guardian for her son without any compensation whatsoever; that on May 26, 1967, the minor will become eligible for emancipation at the discretion of the judiciary under relevant statutes of the State of Tennessee, where he resides, and plans to make application for such emancipation; that his mother, Audrey Mae Williams, as such Tennessee Guardian, further agreed that no part of the corpus or income of the Guardianship shall be used for the care or support of the minor without Court approval and, further, that the funds and assets, corpus and income of said Guardianship Estate will be invested and maintained in investments prescribed by law and approved by the Court, all of which terms of said agreement are approved by the Court and incorporated in the decree of the Chancery Court of Davidson County, Tennessee rendered on June 11, 1963.

4. That among the assets which the minor, RANDALL HANK WILLIAMS, did become entitled to receive as the sole distributee of the estate of his father were several rights of renewal of certain copyrighted songs authored or composed by the minor's father prior to the death of the father, and numerous unpublished lyrics composed by Hiram (Hank) Williams during his lifetime

but not published at the time of his death. Such copyrighted material, and unpublished lyrics are more particularly described in the files and records of this cause in a certain Petition for Instructions filed herein on January 15, 1963, as a paper number 35 and the exhibits attached thereto.

5. On January 15, 1963, without prior notice to or consultation with either the ward or his mother, the Guardian did cause to be filed herein for the consideration of this Court a Petition for Instructions, as aforesaid, asking that authority be given the Guardian to enter into a contract granting unto Fred Rose Music, Inc., a Tennessee corporation, the exclusive right to renew the copyrights on the material composed by Hiram [sic] (Hank) Williams, deceased, and copyrighted during his lifetime; and, further, all rights of every type and character in the lyrics composed by said decedent but not copyrighted at the time of his death, all in accordance with the terms and conditions set forth in the Petition and the attachments thereto now remaining in the files and records of this cause.

6. Thereafter, on March 19, 1963, still without actual notice given to the ward or to his mother, the Guardian, Irene W. Smith, did cause said Petition to be set down for hearing in this cause, introduced certain testimony in support of the prayer of said Petition and thereby induced the then presiding Judge of this Court to enter a certain Decree granting the prayer of the Petition and directing the Guardian to enter into a contract in the manner and form proferred [sic] by Fred Rose Music, Inc., the said Decree having been predicated upon the evidence offered by the Guardian and Fred Rose Music,

Inc., and the recommendations made to the Court by the Guardian and the said Fred Rose Music, Inc.

7. That as a result of the Decree aforesaid, the Guardian did enter into a certain contract granting unto Fred Rose Music, Inc., the aforesaid rights of renewal and all rights in the unpublished lyrics for a total consideration paid to the Estate of the minor ward, Randall Hank Williams, of Twenty five thousand ($25,000.00) dollars, all of which was done without the prior knowledge, consent, notice to or acquiesence [sic] of either the ward or his mother, Audrey Mae Williams, although both the Guardian and Fred Rose Music, Inc., did then know, or should have known, that both the ward and his mother were active in the field of country and western music and thereby were peculiarly possessed of knowledge as to the real worth of the renewal catalogue and the desirability of contracting with Fred Rose Music, Inc.

8. The consideration paid, as aforesaid, for the property interests obtained by Fred Rose Music, Inc., was, to the full knowledge and awareness of Fred Rose Music, Inc., grossly inadequate, the rights of renewal aforesaid, without reference to the great but difficult to ascertain value of the unpublished lyrics, being worth the minimum sum of Five hundred thousand ($500,000.00) dollars. Such disparity between the true, current fair market value of such rights, as of the date of such contract, and the price for which the Guardian did agree to sell the same, to-wit: Twenty five thousand ($25,000.00) dollars, being so great as to render such transaction presumptively fraudulent.

9. Concurrent with the filing of the aforesaid Petition, and without the knowledge or consent of the minor ward or his mother, the said Irene W. Smith, then acting as Guardian of said minor, did enter into an agreement or undertaking with Fred Rose Music, Inc., providing, to the best of Petitioners' information and belief, that Fred Rose Music, Inc., would pay to the said Guardian, personally, the sum of five thousand ($5000.00) dollars upon the entry of the requested Decree by this Court, such sum being thereafter paid by check No. 168, drawn on the account of Fred Rose Music, Inc., in the First American National Bank, Nashville, Tennessee,and deposited in the account of Irene W. Smith, Real Estate, in the Wynnwood State Bank, Dallas, Texas.

Petitioners' are informed and believe that the payment of such sum of money was contingent upon the said Irene W. Smith, as Guardian, obtaining approval of the proposed sale of the wards interests, as above set forth; but, whether the payment was for such purpose or for the acquisition of some contingent interest held or claimed by the said Irene W. Smith as an individual, the agreement to make such payment created such a conflict of interest between the said Irene W. Smith, her agent, attorney or representative, and the ward, as to compel all such persons to disqualify themselves to act for the ward in the then pending proceedings, all to the knowledge and with the participation of Fred Rose Music, Inc., and the failure of Irene W. Smith and her agents or representatives to so disqualify themselves rendered all proceedings relating to such transaction thereafter held in this cause a nullity.

10. Although certain purposted [sic] unbiased, expert testimony was taken in support of the Petition filed,

those persons offered as expert, unbiased and disinterested witnesses were, either in whole or in part, agents, employees, representatives, or close business associates of Fred Rose Music, Inc., all of which should have been but was not disclosed to the Court; no adequate cross examination of such persons was undertaken to disclose such bias or possible bias, and the effect of failing to make known to the court such bias or possible bias was to work, although petitioners neither know nor allege it was so intended, a fraud upon the court such as to make the entry of the Decree a voidable act, and one which should, in equity, be avoided.

11. That in order that a full and complete adjudication of the rights of all of the parties, including those of the ward and of Fred Rose Music, Inc., may be obtained herein, a rule should be entered in this cause compelling and directing that Irene W. Smith, Guardian in this cause, and the said Fred Rose Music, Inc., appear at a date soon to occur, all as by the rules of this court provided, to show cause, if any they or either of them have, why the Decree of this Court, entered on March 19, 1963, as paper number 43, should not be vacated and held for naught.

WHEREFORE, THE PREMISES CONSIDERED, the petitioners, AUDREY MAE WILLIAMS, Guardian of the person and estate of RANDALL HANK WILLIAMS, and RANDALL HANK WILLIAMS, a minor in his own right, do pray that Fred Rose Music, Inc., and Irene W. Smith individually and as Guardian of Randall Hank Williams, a minor, [sic] made a party to this cause by proper process and that an order be entered herein directing that this petition be set down for hearing at a date soon to occur; that notice of such hearing be directed to be given,

in such manner and under such circumstances as this Court may deem appropriate, to Irene W. Smith, as Alabama Guardian of the Estate of Randall Hank Williams, a minor, and to Fred Rose Music, Inc., and that such persons, and all others having any interest in the subject matter of the Decree of this Court entered on March 19, 1963, as paper number 43, be directed to appear at such time as this Court may deem proper, then and there to show cause, if any they have, why such Decree, aforesaid, should not be vacated; and,

WHEREFORE, THE PREMISES CONSIDERED, petitioners file this application pursuant to the provisions of Title 21, Section 109, of the Code of Alabama of 1940, as amended, and pray that a date may be set for the hearing hereof and that notice of the filing of said petition, together with a copy of same, and a copy of the order setting the date for the hearing of same, be given to Irene W. Smith, as Guardian of Randall Hank Williams, a minor, or her attorney, Robert B. Steward, Esq.; and, petitioners further pray that, upon the hearing of said petition, this Court will order and direct the removal of the property and estate of the minor, Randall Hank Williams, to the State of residence of said ward and of the said Audrey Mae Williams, the Mother, Custodian and Guardian of the person and estate of said ward; that the said Irene W. Smith, as Guardian of Randall Hank Williams, a Minor, by appointment of the Probate Court of Montgomery County, Alabama, shall forthwith make out and file a full and complete statement and accounting of her actions and transactions as Guardian of the said Randall Hank Williams, a minor; and, that she shall forthwith transfer, pay over and deliver to the said Audrey

Mae Williams, as Guardian of the person and estate of Randall Hank Williams, a minor, by appointment of the Chancery Court of Davidson County, Tennessee, all of the cash, investments, assets and properties of all kinds which she holds or has in her possession as such Guardian of the Estate of the said Randall Hank Williams, a minor; and, petitioners further pray that this Court will grant such other, further and different relief as in equity and good conscience petitioners may be entitled, as they will ever pray, etc.

/s/ Audrey Williams
As Mother, Custodian and Guardian of Randall Hank Williams, a Minor

/s/ Randall Hank Williams, Jr.
RANDALL HANK WILLIAMS, A MINOR

/s/ Randall Hank Williams, Jr.
RANDALL HANK WILLIAMS, JR.

STATE OF TENNESSEE

DAVIDSON COUNTY

BEFORE ME, Mary Claire Rhodes, a Notary Public in and for said County in said State personally appeared Audrey Mae Williams, and Randall Hank Williams, Jr., known to me to be the persons whose names are affixed thereto, who, first being duly sworn, on oath depose and say: That the facts averred in the foregoing petition are true and correct to the best of their knowledge, information and belief.

/s/ Mary Claire Rhodes

SWORN to and subscribed before me this 7th day of March, 1967

/s/ Mary Claire Rhodes
Notary Public
Davidson County, Tennessee

My Commission Expires
July 27, 1969

Attorneys for Petitioners
W.D. Partlow, Jr.
Tuscaloosa, Alabama
and
J.M. Williamson
P.O. Box 64
Erbana, Illinois
by /s/ W.D. Partlow, Jr.

APPENDIX I-3

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF RANDALL HANK WILLIAMS, A MINOR	))))))	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY, NO. 27960

ANSWER

Now comes Irene Smith, as Guardian for Randall Hank Williams, a minor, and for answer to the petition of Audrey Mae Williams to vacate the Court's decree of March 19, 1963, and for an accounting and transfer of assets, says as follows:

1. She admits the jurisdictional allegations of this paragraph and denies all other allegations thereof.

2. She denies the allegations of paragraph 2.

3. She admits her appointment as guardian for Randall Hank Williams, a minor, by this Court and denies all other allegations of paragraph 3.

4. She denies the allegations of paragraph 4 and for further answer states that the right of renewal for the copyrighted songs of the late Hank Williams did not come into being at his death but by statute comes into existence one year prior to the expiration of each of said copyrights, and such right of renewal is vested at that time in those persons designated by statute.

5. She denies the allegations of paragraph 5.

6. She denies the allegations of paragraph 6.

7. She denies the allegations of paragraph 7.

8. She denies the allegations of paragraph 8.

9. She denies the allegations of paragraph 9.

10. She denies the allegations of paragraph 10.

11. She denies the allegations of paragraph 11.

12. For further answer to paragraphs 5 through 11, she states that, after lengthly [sic] negotiations and with the full knowledge of Audrey Mae Williams and her attorneys, an agreement was made between Irene Smith as Guardian and Fred Rose Music, Inc., regarding the contingent renewal rights of the minor, Randall Hank Williams; that said agreement was made with approval of this Court and in what was believed by the Court and by the Alabama guardian to be in the best interest of the minor; that the Alabama guardian, as sister of the late Hank Williams, and her two children had contingent renewal rights in said copyrighted music, which she and they individually conveyed to Fred Rose Music for a valuable consideration paid to them; and that the father of the late Hank Williams and others have or may claim to have some contingent renewal rights to the copyrights of said music. All of such contingent rights affected and do affect the value of such contingent renewal rights.

For further answer she states that there are or may be other persons who have an interest in or claim to the contingent copyright renewals and that such claims, if any, will be determined in proceedings now pending before this Court in the administration of the Estate of Hiriam "Hank" Williams. Nevertheless, a guardian ad litem should be appointed to represent the interests of all minors other than Randall Hank Williams who have or

may have any claim to contingent rights of renewal to the copyrighted music of Hiriam "Hank" Williams.

For further answer she says that it is in the best interest of all parties to determine the validity of the contract made by her as guardian with Fred Rose Music, Inc., and the rights of all parties thereunder.

13. For further answer to paragraphs 1, 2 and 3 of the Complaint and to that aspect seeking to have the Alabama guardianship closed and its assets transferred to Petitioner as the Tennessee guardian, she says that Petitioner as Tennessee guardian has filed no accounting with the Chancery Court at Nashville until required by that Court to do so. She has now filed an accounting for 1964, 1965, and 1966 which shows that she has received as such guardian $441,236.12 and spent $447,366.01 and, therefore, is short in her accounting by some $6,129.89. Her accounting has not been heard or approved by the Court. The information presently available on the actions of Petitioner as Tennessee guardian indicates she is unfit to administer the funds which she has received and is not a fit and suitable person to administer the funds of the Alabama guardianship which she now asks this Court to turn over to her.

The necessity for closing this guardianship and the question of paying the assets over to Petitioner as Tennessee guardian were before this Court in 1963 when Petitioner filed a similar bill, making substantially the same allegations. On her failure to answer interrogatories propounded to her for more than a year after this Court required answers to be made, the court dismissed her petition. Under the provisions of Equity Rule 75, this

order was a dismissal on the merits; therefore, the only question properly before the Court is that aspect relating to renewal rights as set out in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11.

JONES, MURRAY, STEWART
& VARNER

BY /s/ Robert B. Stewart
Attorneys for Irene Smith

I hereby certify that I have served copies of the foregoing answer on W.D. Partlow, Jr. and J.M. Williamson, Attorneys for Audrey Mae Williams, on Richard H. Frank, Jr. and Maury D. Smith, Attorneys for Fred Rose Music, Inc., and on J. M. Weinstein, Attorney for Metro-Goldwyn-Mayer, Inc., by mailing the same, postage prepaid, to them at their respective offices on this the 14 day of April, 1967.

/s/ Robert B. Stewart
Of Counsel for Irene Smith

APPENDIX I-4

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF RANDALL HANK WILLIAMS, A MINOR	)))))))	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY CASE NO. 27960

ANSWER OF GUARDIAN AD LITEM

Comes now, Drayton N. Hamilton, guardian ad litem for any person or persons having an interest in or claim to the copyrights or renewals thereof or any other property in the custody or under the control of the court in this cause and who is a minor under the age of twenty-one years who is not now a party to these proceedings and represented by counsel, and has heretofore accepted the appointment as guardian ad litem in this cause and now for answer says:

1. That the guardian ad litem avers and shows unto this Honorable Court that he has made a diligent search for any heretofore unknown persons who have an interest in or claim to the copyrights or renewals thereof or any other property in the custody or under the control of the court in this cause and who is a minor under the age of twenty-one years who is not now a party to these proceedings and represented by counsel, and that the only person this guardian ad litem has been able to locate and determine as such a person is that person hereinafter referred to in Paragraphs 13 and 14 of this answer.

2. The guardian ad litem neither admits nor denies the allegations of Paragraph 1 of the petition.

3. The guardian ad litem neither admits nor denies the allegations of Paragraph 2 of the petition except any allegation in said Paragraph 2 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

4. The guardian ad litem neither admits nor denies the allegations of Paragraph 3 of the petition.

5. The guardian ad litem denies each and every allegation of Paragraph 4 of the petition.

6. The guardian ad litem neither admits nor denies the allegations of Paragraph 5 of the petition.

7. The guardian ad litem neither admits nor denies the allegations of Paragraph 6 of the petition.

8. The guardian ad litem neither admits nor denies the allegations of Paragraph 7 of the petition except any allegation in said Paragraph 7 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

9. The guardian ad litem neither admits nor denies the allegations of Paragraph 8 of the petition.

10. The guardian ad litem neither admits nor denies the allegations of Paragraph 9 of the petition except any allegation in said Paragraph 9 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

11. The guardian ad litem neither admits nor denies the allegations of Paragraph 10 of the petition.

12. The guardian ad litem neither admits nor denies the allegations of Paragraph 11 of the petition except any allegation in said Paragraph 11 which infers that Randall Hank Williams is the only person entitled to share in the Estate of Hiriam "Hank" Williams, and the guardian ad litem denies any such inference.

13. For further answer to the petition, as amended, the guardian ad litem says and affirmatively alleges that there is in the file of the cause entitled "In the Matter of the Estate of Hiriam "Hank" Williams, Case No. 25056, Circuit Court of Montgomery County, Sitting in Equity," a document carrying file No. 204, an agreement between decedent, Hiriam "Hank" Williams, and Bobbie W. Jett; that said document was filed for record in the Probate Court of Montgomery County, Alabama, under order of that court dated August 18, 1967; and your guardian ad litem affirmatively alleges that there was a girl child born to the said Bobbie W. Jett (named in said document and the signatory thereof) on or about, to-wit, January 6, 1953, in St. Margaret's Hospital, Montgomery, Alabama; that said child is living and is the daughter of Hiriam "Hank" Williams, and as such entitled to share equally in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

14. That the guardian ad litem further affirmatively alleges that the filing requirements of the statutes of the State of Alabama, with respect to legitimation of children,

have been complied with and alleges that the said child born to the said Bobbie W. Jett is the legitimate heir of Hiriam "Hank" Williams; and in support of such allegation your guardian ad litem attaches hereto and makes a part hereof, as if fully set out herein at this place, a certified copy of the order of the Probate Court dated August 18, 1967, made on proceedings had in said Court, which proceedings are now on file in this Court; and the guardian ad litem avers that said child is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

15. That your guardian ad litem affirmatively alleges, additionally, in the event this Honorable Court determines that there has been a failure or defect in the compliance with the statutes of the State of Alabama with respect to the legitimation of said child of Hiriam "Hank" Williams, that said child is the illegitimate daughter of Hiriam "Hank" Williams and as such is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

16. That your guardian ad litem further affirmatively alleges that said child of Bobbie W. Jett and Hiriam "Hank" Williams is the illegitimate daughter of Hiriam "Hank" Williams and as such is entitled to share equally with any other child or children in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the Estate of Hiriam "Hank" Williams by virtue of any copyrights,

or the renewals thereof, owned by or the property of the Estate of Hiriam "Hank" Williams in any tunes, songs, music, compositions, or other materials belonging to the Estate of Hiriam "Hank" Williams or heretofore assigned by the Estate of Hiriam "Hank" Williams, or hereafter assigned or transferred by the Estate of Hiriam "Hank" Williams, and avers in support of this allegation that the United States Copyright Laws control the distribution of any such funds from said royalties on said enumerated materials and avers that rights under such laws present a federal question and that this Honorable Court is bound and must give effect to said statutes and the decisions of the federal courts thereunder; that the proof in this case will affirmatively show that the Estate of Hiriam "Hank" Williams does enjoy revenues from such sources enumerated which will be or should be accounted for in this proceeding and cause.

WHEREFORE, THESE PREMISES CONSIDERED, the guardian ad litem respectfully prays:

I. That upon hearing hereof the Court will render appropriate decree or decrees, orders or judgment;

(A.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and was recognized as such by him, and duly and legally legitimated according to the statutes and laws of the State of Alabama, and is entitled to share in the copyrights or renewals thereof Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future.

(B.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and as such is entitled to share in the copyrights or renewals thereof of Hiriam "Hank" Williams or of the Estate of Hiriam "Hank" Williams and the proceeds from the same, whether the same have already accrued or will accrue in the future, with any other child or children of the said Hiriam "Hank" Williams.

(C.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in the Estate of Hiriam "Hank" Williams, and in particular, any part of the Estate of Hiriam "Hank" Williams attributable to or resulting from royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the estate by virtue of any copyrights, or the renewals thereof, owned by or the property of the Estate of Hiriam "Hank" Williams in any tunes, songs, music, compositions or other materials belonging to the Estate of Hiriam "Hank" Williams or heretofore assigned by the said estate or hereafter assigned or transferred by the said estate.

(D.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and was recognized as such by him, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States,

by virtue of any copyrights, or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(E.) Declaring that the girl child born to Bobbie W. Jett in Montgomery, Alabama, on or about, to-wit, January 6, 1953, is the daughter of Hiriam "Hank" Williams, and is entitled to share in any royalties or other remunerations whatsoever from any sources heretofore paid or now payable or payable in the future to the children of Hiriam "Hank" Williams, under the Copyright Laws of the United States, by virtue of any copyrights or the renewals thereof, tunes, songs, music, compositions or other like materials which belonged to or were the property of Hiriam "Hank" Williams, whether such royalties and remunerations have heretofore been assigned or may hereafter be assigned.

(F.) And your guardian ad litem further prays that this Honorable Court will appoint a fit and suitable person, to be determined by this Court, as the legal guardian for the daughter of Hiriam "Hank" Williams by Bobbie W. Jett, born on or about, to-wit, January 6, 1953, at Montgomery, Alabama, upon such person entering into bond with sufficient sureties, to receive and account for any and all monies, sums, and property to which the said daughter, who is now a minor, may be entitled.

(G.) And your guardian ad litem further prays for such other, further, different or general relief to which the

above referred to girl child may be entitled in the premises and to which the Court may seem mete and just, and your guardian ad litem will ever pray, etc.

DONE this the 14 day of September, 1967.

/s/ Drayton N. Hamilton
Drayton N. Hamilton, as guardian
ad litem for any person or
persons having an interest
in or claim to the
copyrights or renewals
thereof or any
other property in the custody or
under the control of
the court in this cause
and who is a minor under the age of
twenty-one years who is not now
a party to these proceedings
and represented by counsel.

I hereby certify that I have, today, this the 14 day of September, 1967, mailed a copy of the foregoing answer by United States Mail, first class, prepaid, to the following attorneys of record:

1. Joseph M. Williamson, Esquire,
   Post Office Box Drawer 64,
   Urbana, Illinois.
2. Messrs. Jones, Murray, Stewart and Varner,
   First National Bank Building,
   Montgomery, Alabama.
3. Messrs. Orenstein, Arrow and Lourie,
   119 West 57th Street,
   New York, New York 10019.

4. Messrs. Bardsdale, Whalley, Leaver, Gilbert and Frank, Nashville Bank and Trust Building,
Nashville, Tennessee.

5. Messrs. Goodwyn, Smith and Bowman,
325 Bell Building,
Montgomery, Alabama.

6 William D. Partlow, Jr., Esquire,
602 25th Avenue,
Tuscaloosa, Alabama.

/s/ Drayton N. Hamilton
Drayton N. Hamilton,
guardian ad litem

State of Alabama) PROBATE
MONTGOMERY COUNTY) COURT
) NO.___

18 August, 1967

IN RE: THE MATTER OF BABY JETT:

ORDER

This day came Drayton N. Hamilton who had heretofore, by letter dated August 12, 1967, identified himself to the Court as being the guardian ad litem in the cases styled "In the Matter of the Estate of Hiriam 'Hank' Williams, Deceased, In the Circuit Court of Montgomery County, Alabama, In Equity, No. 25056," and "In the Matter of the Guardianship of the Estate of Randall Hank Williams, a Minor, In the Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27960," both of

which cases are pending, and made known that he had been authorized to secure, under court order, that certain document executed by Hank Williams during his lifetime (and identified in this Court as paper numbered "204" of the file in the Circuit Court Case No. 25056, and hereafter identified as Petitioner's Exhibit "No. 1"), and that he, as Petitioner, proposed to file said document, along with an affidavit of Mrs. Jo Kerr Cast, who was present when the document was originally executed; the letter having pointed out that the child about whom the document related had come into the jurisdiction of the Alabama Department of Pensions and Securities and had been placed by that agency for adoption; that the said Department was most concerned that no publicity be given to the identity of the child and that the child, its parentage and its adoption be protected by the Court; that Petitioner, in order to comply with the Alabama Statute, suggested that it was necessary in filing the document and taking testimony with respect to its execution and witnessing that the testimony be taken in chambers and only in the presence of those persons concerned with its filing; the Petitioner had further suggested in the letter that a construction of the document by the Circuit Court during the trial of the issues of the two Estates was essential; that a copy of the letter was posted to all attorneys of record in the two Estates. The said letter referred to was made Petitioner's Exhibit "No. 3" in this proceeding.

And appearing in Court, Drayton N. Hamilton, as Petitioner, made a preliminary statement, identifying himself as guardian ad litem in the two Estates, referred to above, and made known to the Court the proceedings

in the Circuit Court by which he had obtained the use of Petitioner's Exhibit "No. 1", and that he appeared for the purpose of filing the Exhibit "No. 1" to comply with the Alabama Statute and Petitioner called Robert B. Stewart as a witness;

That Robert B. Stewart identified the document, the signatures thereon, and testified that he took the acknowledgment; testified that Hank Williams' mother, Mrs. Stone, was present at the time the document was signed and that Mrs. Jo Kerr Cast was his only secretary at the time the instrument was prepared, that she took the document in shorthand in the presence of Hank Williams and Bobbie W. Jett, typed it and that the document has been in his file since execution and was submitted to the Circuit Court on order of Judge R. P. Emmet;

That Petitioner called Mrs. Jo Kerr Cast as a witness and Mrs. Jo Kerr Cast testified that she was employed by Robert B. Stewart, as his only secretary, in his office in Montgomery, Alabama, during the month of October, 1952, that she remembered Hank Williams and Bobbie W. Jett coming into the office, that she typed the Petitioner's Exhibit "No. 1", that she knew that it was signed by the said Hank Williams and Bobbie W. Jett, that she had executed an affidavit dated 14 August 1967, before Frances B. Skinner, a Notary Public, and that the physical arrangements of Robert B. Stewart's office was such that she could witness the signing by the said Hank Williams and Bobbie W. Jett of Petitioner's Exhibit "No. 1"; that she was willing for the said affidavit to be introduced and was further willing that it be attached to the Petitioner's Exhibit "No. 1".

And identified and introduced into evidence and filed were paper numbered "204" in Case No. 25056, as Petitioner's Exhibit "No. 1", the Cast affidavit as Exhibit "No. 2", and the letter of Drayton N. Hamilton, with the envelope, as Exhibit "No. 3", and

The Court understanding the testimony and the filing of the three exhibits, it is,

THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

(1) Exhibits "1", "2", and "3" be admitted to file and recorded.

(2) That a certified copy of Exhibit "No. 1" be substituted in lieu of the original and that the original be surrendered to Drayton N. Hamilton for its return to the custody of the Circuit Court of Montgomery County.

(3) That a signed copy of Petitioner's Exhibit "No. 2" be substituted in lieu of the original and that the original be attached to Petitioner's Exhibit "No. 1", and filed in the Circuit Court of Montgomery County with Petitioner's Exhibit "No. 1".

(4) That a certified copy of Exhibit "No. 3" be attached to the transcript of the record of this proceeding.

(5) That the transcript of this proceeding be placed on file in this Court and that a copy of same be transmitted to the Circuit Court of Montgomery County to the Honorable Richard P. Emmet, Judge of that Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this order be forwarded to the Circuit Court of Montgomery County, Alabama, to the

attention of Judge Richard P. Emmet, and a copy to the attorneys of record in the two Estates referred to herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that this proceeding be retained in the bosom of the Court pending further proceedings in the Circuit Court of Montgomery County, In Equity, Cases Nos. 25056 and 27960.

All other matters reserved.

DONE, this 18th day of August, 1967.

/s/ Perry O. Hooper
Probate Judge

The State of Alabama) PROBATE
MONTGOMERY COUNTY) COURT

I, PERRY O. HOOPER, as Judge of Probate in and for said County in said State, hereby certify that the within and foregoing is a full, true and correct copy of:

Decree rendered by the Probate Court on August 18, 1967 IN THE MATTER OF BABY JETT

as fully and completely as the same appears on file and of record in this office.

Given under my hand and official seal this the 13th day of September, 1967.

/s/ Perry O. Hooper
Judge of Probate Court
Montgomery County, Alabama

APPENDIX I-5

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF RANDALL HANK WILLIAMS, a minor.	:	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY CASE NO. 27,960

This cause comes on to be heard upon the pleadings, all as noted by the Register.

This Court finds it has jurisdiction of the cause and of the parties.

As to the question of jurisdiction of the cause, the Court rejects the contentions of Respondent Smith and Respondent Rose as to the application of any Statute of Limitation.

This Court has now exercised continuing jurisdiction of this guardianship for some fifteen years. In this or any other guardianship there occurs nothing during the course of the guardianship to which any Statute of Limitation applies insofar as any conduct between the guardian and ward. The inherent rules of equity jurisdiction would allow a subsequent review of any conduct by the guardian. The relationship existing between a guardian and a ward is never a relationship of opposing advocates. As such, the approval by the Court, exercising continuing jurisdiction of the guardianship, of the conduct of a guardian in any situation is subject to subsequent review by that Court upon additional evidence being presented. It matters not in what mode of pleading such evidence is

presented. Indeed, a Court, *ex mero motu*, should act upon such evidence. The only rule prescribed by law of the state is to protect the interest of the ward. Likewise, any third party desirous of contracting with the ward is subject to the same continuing jurisdiction.

The Court rejects further the contention that only upon actual and extrinsic fraud can the previous decree of *this* Court be vacated. The cases relied upon in this contention concern the vacating of decrees by one Court of other Courts' decrees. None of the cases cited concern an interest of a Court's Ward.

This Court, exercising continuing jurisdiction of the guardianship and being governed only by the rule of law which requires the best interest of the ward to be paramount, is allowed to weigh any legal evidence properly presented at any time now or subsequent as to any contractual relationship previously approved by this Court. There exists no limitation to this inherent right of equity in protecting a ward.

It follows that this Court has jurisdiction of this cause and has the duty at this time of looking further into the matter of this Court's Decree in this same cause dated March 19, 1963.

A finding of fact in this guardianship is incomplete without an incorporation of the facts elicited from the evidence in scores of other hearings in this case and in the Estate of Hiriam (Hank) Williams, Case No. 25,056, Fifteenth Judicial Circuit of Alabama.

This Court has carefully reviewed the evidence in its entirety. The review has not been in the light of any

narrow restrictions suggested by the contentions of jurisdictional or statutory limitations or burdens of proof as to actual and extrinsic fraud. This Court has weighed the evidence only in the light of the best interest of this ward. In this light, and with the benefit of hindsight in now looking back through the years to the year 1963, it is inescapable that the contract in question was then and is now in the best interest of the ward. The Court finds that the relationship created by the contract is provident for the ward.

The Court finds there are aspects of the relationship created by this contract which are not subject to the utmost clarity. These aspects concern the unpublished artistic work of the deceased father of the ward; the benefits of affiliation with the performing societies; and future royalty schedules being more completely detailed. The Court finds the best interest of the ward requires that these matters be spelled out in detail. The Court is aware that these questions might possibly be matters within the framework of the Estate, however, they have a direct bearing on the guardianship.

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when

illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off-spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been permanently adopted under the very excellent, wise, and beneficial direction of this State's Department of Pensions and Security. By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

The Court is of opinion that the Copyright Law as interpreted by the Supreme Court of the United States in *DeSylva v. Ballentine*, 351 U.S. 570; 100 L.Ed. 1415; 76 Sp. Ct. 974, preclude the inclusion of any heir other than the ward of this Court as having any right of renewal, provided the ward survives to the appropriate time.

Notwithstanding the proposed revision of the Copyright Law of this nation pending in the Congress, this Court retains the same opinion.

The pen of this Court cannot rest without one final finding. The attorney for this guardian and for the estate traces his professional connection from the time when the name Hank Williams was but another "drifter" passing

before the Bench of a local small claims and misdemeanor Court. But for the professional care, tenacity, diligence, interest and concern of this gentleman, the estate of this ward would not be as considerable as it is, nor would its future prospects be so bright. His conduct is in the highest tradition of a very noble profession.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the contract in question is in the best interest of the ward and that the decree of this Court dated March 19, 1963 should not be vacated.

2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

3. That certain provisions of the contract do not contain sufficient clarity. That these provisions are subject to additional attention by the parties hereto. That in the failure of the parties hereto to reach accord, the Court upon application will proceed to adjudge these matters. That the Court retains jurisdiction of this cause to effect this provision.

It is regrettable cordiality does not exist in this situation. It would seem that the large and significant community of interest between the ward and Respondent Rose could build a bridge which would renew and continue one of the very few genuine traditions found in the entire entertainment industry, now noted for its phony traditions. It is hoped by the Court that this area of negotiation will lead to this.

4. That the fee of the Guardian ad Litem be $5,698.72 which sum shall include all expenses including travel and that the same be taxed as part of the cost.

5. That the cost of these proceedings be taxed one-third against the guardianship and two-thirds against Respondent Rose. The taxing against the guardianship is based upon the fact that the funds expended belong to the ward and the ward is now the only petitioner.

DONE, this the 30 day of Jan, 1968.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX J-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CATHY YVONNE STONE,

Plaintiff,

-against-

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., ABERBACH ENTERPRISES, LTD., ACUFF-ROSE OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Defendants.

85 Civ. 7133 (JFK)

OPINION and ORDER

- X

APPEARANCES:

For Plaintiff:
James A. Goodman, Esq.
Rudin, Richman & Appel
Beverly Hills, CA
Of Counsel: Marjorie Smith, Esq.
Coblence & Warner
New York, NY

F. Keith Adkinson, Esq.
Washington, D.C.

For Defendants Hank Williams, Jr.,
Wesley H. Rose, Roy Acuff,
Fred Rose Music, Inc. and
Milene Music, Inc.:
Alan L. Shulman, Esq.
Silverman, Shulman & Slotnick, P.C.
New York, NY

For Defendants Acuff-Rose Opryland Music, Inc.
and Milene-Opryland Music, Inc.:
Lawrence I. Fox, Esq.
Berger & Steingut
New York, NY

For Defendants Billie Jean Williams Berlin, Chappell
Music Company and Aberbach Enterprises, Ltd.:
Thomas R. Levy, Esq.
New York, NY

JOHN F. KEENAN, United States District Judge

JOHN F. KEENAN, United States District Judge:

Background

Plaintiff, born on January 6, 1953, brings this action concerning her allegation that she is the illegitimate daughter of the late country and western singer Hank Williams, Sr. ("Hank") and is entitled to a share of the royalties derived from Hank's compositions ("the Works").

Plaintiff has sued ten defendants: Hank Williams, Jr., the legitimate son of Hank and Audrey Mae Williams; Billie Jean Williams Berlin, who was married to Hank

when he died on January 1, 1953; Aberbach Enterprises, Ltd., the owner of the copyright renewal rights in the Works that previously had been held by Berlin and were transferred to Aberbach pursuant to a May 28, 1969 agreement; Chappell Music Company, an entity that acts as an administrative agent for Aberbach in connection with the Berlin renewal interest; Acuff-Rose Opryland Music, Inc. ("ARO"), the successor in interest of both the original rights and the renewal rights in the Works held by Williams, Jr.; Milene-Opryland Music, Inc. ("MOM"), an additional successor in interest in the original rights and the renewal rights in the Works held by Williams, Jr.; Fred Rose Music, Inc. ("FRMI"), a corporation that, in 1963, obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; Milene Music, Inc., a corporation that, in 1963, also obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; and Roy Acuff and Wesley H. Rose, Trustees in Liquidation for FRMI and Milene Music.

The Third Amended Complaint alleges two causes of action. First, the complaint avers that plaintiff is Hank's illegitimate daughter, and as such is a "child" entitled to one-third of the rights, and interests in and derived from, the Works pursuant to the United States Copyright Act of 1976. Second, plaintiff contends that defendants ARO, MOM, Rose, Acuff, FRMI and Milene and certain non-parties engaged in a conspiracy that lasted over fifteen years. The goal of this alleged scheme was to prevent plaintiff from perfecting her copyright interest in the Works so that the defendants would have the sole financial benefit of the copyrights. The defendants purportedly achieved this goal by withholding from plaintiff and the

Alabama state courts information about her identity and by arranging for the appointment of Drayton Hamilton as guardian ad litem for plaintiff during legal proceedings held in 1967-1968. In addition, the scheme allegedly included a 1963 agreement made by Williams, Jr., through his guardian, with FRMI and Milene providing for Williams, Jr. to transfer his rights in the Works.

Currently pending before the Court are three motions. The defendants have jointly moved for summary judgment asserting, *inter alia*, that the claims are barred by the copyright statute of limitations, laches, equitable estoppel, res judicata, collateral estoppel, and the terms of the 1976 Copyright Act. Plaintiff has cross-moved for partial summary judgment on her claim that she is Hank's natural daughter and that she is entitled to an undivided one-third interest in all renewal rights in the Works. Defendant Berlin, Chappell Music and Aberbach Enterprises have moved for partial summary judgment on the ground that if plaintiff were to prevail on her first cause of action, Berlin is entitled to a one-half interest in the Works and Hank's children are entitled jointly to a one-half interest.

For the reasons set forth below, the Court grants the defendants' motion for summary judgment and the complaint is dismissed in its entirety. The Court, therefore, does not reach the questions raised in either plaintiff's partial summary judgment motion or in the partial summary judgment motion made by defendants Berlin, Chappell Music and Aberbach Enterprises.

Facts

For the purposes of defendants' summary judgment motion, the Court assumes that Hank is plaintiff's natural father. Her natural mother is Bobbie Jett. Plaintiff was conceived in approximately April, 1952. Although Hank allegedly wanted to raise the child, his desires did not extend to marrying the child's mother, Bobbie Jett. This intention was made unmistakably clear on October 18, 1952, when Hank married defendant Berlin. However, Hank entered a contract with Jett three days prior to marrying Berlin. The agreement addressed custody issues and called for him to bear various financial responsibilities in connection with the birth of Jett's child. The contract also stated that paternity was in doubt and not admitted by the agreement. On January 1, 1953, Hank Williams, Sr. died at 29 years of age. Less than one week later, on January 6, 1953, Bobbie Jett gave birth to plaintiff.

After Jett left the hospital, the baby was left in the care of Lillian Stone and Marie Harvell, Hank's mother and cousin respectively. On December 23, 1954, a final decree of adoption was entered by the Montgomery County, Alabama, Department of Public Welfare giving Mrs. Stone the child. Irene Smith, Hank's sister, promised to care for the child in the event something happened to Mrs. Stone. Sadly, Mrs. Stone died on February 26, 1955 and Smith broke her pledge. Plaintiff was made a ward of the State of Alabama on April 29, 1955 and remained a ward of the state until February 21, 1956. On that date, an interlocutory order of adoption was entered giving custody to the Deupree family. On April 23, 1959, a final decree of adoption was entered.

While plaintiff was being raised by the Deuprees and living her early life, events concerning Hank's estate and other collateral issues continued to unfold. Plaintiff was awarded $2,000 as her homestead interest in Mrs. Stone's residence after Mrs. Stone died. This money was placed in an interest-bearing account with the Circuit Court of Montgomery County, Alabama, to be held for plaintiff until she turned twenty-one years old on January 6, 1974. As will be described below, plaintiff only became aware of this bequest in approximately December, 1973. In 1963, the guardian of Wiiliams [sic], Jr. petitioned the Circuit Court of Montgomery County, Alabama, for permission to sell Williams, Jr.'s rights in the renewal term copyrights in the Works to FRMI. The court granted the request and an agreement was entered on March 20, 1963.

This agreement resulted in litigation taking place during 1967 and 1968 in the Circuit Court. The action attempted to determine all rights in the Works and involved Williams, Jr.'s petition to vacate the 1963 agreement. Thus, an inquiry was made into the existence of any unknown heirs to the estate. Drayton N. Hamilton, a Montgomery attorney who had previously been appointed as plaintiff's guardian ad litem in connection with Lillian Stone's estate, was named guardian ad litem by the Circuit Court to represent any minors who might have an interest in Hank's estate. After conducting an investigation, Hamilton told the court that plaintiff was the only potential additional heir. Hamilton contacted the Deuprees through the Alabama Department of Pensions and Security ("Alabama P & S") and advised them of the 1967-1968 proceedings. Mr. and Mrs. Deupree came to

Montgomery and apparently had a meeting with Hamilton. Hamilton was told not to pursue any claim on behalf of plaintiff. Despite this request, Hamilton continued to press vigorously the rights of plaintiff as Hank's natural daughter. During his activities, Hamilton obtained a copy of the 1952 contract between Hank and Jett which was introduced as evidence in the Circuit Court. After conducting evidentiary hearings which were widely reported in the Alabama press, the Circuit Court ruled that plaintiff was not an heir entitled to any inheritance from Hank's estate. Hamilton then unsuccessfully sought leave to appeal the court's rulings, despite the wishes of the Deuprees.

The matter remained closed until approximately the end of 1973. By this time, plaintiff was a college student at the University of Alabama. The Deuprees went to Tuscaloosa to visit plaintiff at college during either the end of December, 1973 or the early part of January 1974. Since plaintiff was on the verge of turning twenty-one years old, the issue of Lillian Stone's estate needed to be addressed. At one point during the visit of her adoptive parents, plaintiff went to the Deuprees' hotel room. Although the accounts of plaintiff and Mrs. Deupree differ slightly, the following is undisputed. Mrs. Deupree told plaintiff that Hank Williams, Sr. either was, or could be, her biological father, and that after her twenty-first birthday plaintiff had to go to the Montgomery courthouse to pick up an inheritance from the estate of Lillian Stone. Soon thereafter, plaintiff went to Montgomery and was accompanied by an uncle, Stanley Fountain, who was a United States Marshal. Her conversation with Mrs. Deupree and her trip to Montgomery prompted plaintiff to

visit a library in Tuscaloosa to research Hank's life. Plaintiff read a book by Roger Williams entitled *Sing a Sad Song* which chronicled Hank's life. The book contained a passage concerning a child born to a brunette from Tennessee. The child, according to the book, was cared for by Lillian Stone until the child was adopted. After her discussion with Mrs. Deupree and the receipt of a $3,800 inheritance from the Stone estate, plaintiff thought that this child might have been herself when she read the book in early 1974. Plaintiff, who claims Mrs. Deupree told her that there was no proof showing Hank to be her natural father and that everything had already been decided against plaintiff, then chose not to pursue the matter further.

Another significant event occurred during 1976. Plaintiff told Nicholas Braswell, a Montgomery attorney who was married to one of plaintiff's college sorority sisters, that she was adopted and might be the biological daughter of Hank Williams, Sr. Braswell was familiar with Judge Richard Emmett [sic] who had presided over the 1967-1968 Circuit Court proceedings. Braswell told plaintiff that Judge Emmett [sic] had a tremendous interest in Hank and had memorabilia from Hank's career all over his office. Braswell asked plaintiff if she objected to his calling up Judge Emmett [sic] and passing along her claim; plaintiff told Braswell to call Judge Emmett [sic]. After Braswell spoke with the judge, he again spoke with plaintiff, telling her that Judge Emmett [sic] would like to meet her. Plaintiff, however, never tried to contact the judge while he was in Montgomery. At some point, Judge

Emmett [sic] moved from Montgomery, Alabama, to California. Although plaintiff learned about this relocation in the newspapers, she never attempted to find out where in California Judge Emmett [sic] moved to, and never attempted to contact him.

In December, 1980, plaintiff received a telephone call from Mr. Deupree. During the conversation, Deupree told plaintiff that he had made certain decisions in the 1960's which he had come to regret. Presumably, these decisions concerned the 1967-1968 proceedings in the Circuit Court. Deupree stated that if plaintiff wanted to discover whether Hank was her biological father, he would help in any way possible. Deupree evidently had this change of heart after watching Williams, Jr. give an interview on a television program. Deupree told plaintiff that he would send her some newspaper articles and the names of certain individuals with whom he had been in contact during the 1960's.

At this point, plaintiff attempted to discover what her file with the Alabama P & S contained. Although plaintiff could not obtain access to her file, she does not recall the reasons given by the Alabama P & S. She then told the Alabama P & S that she wanted to contact her natural mother. As a result, the department wrote a letter to Willard Jett, Bobbie Jett's uncle. During 1981, plaintiff once again read books and newspaper articles on Hank. Yet, it was in 1981 that she read an article that referred to Hank's cousin, Marie Harvell. She had previously spoken with Charles Carr, Hank's chauffeur, a name she uncovered by reading a book. Carr told plaintiff about the existence of Harvell. During 1981, plaintiff visited Harvell. Upon seeing a birth mark on plaintiff's arm, Harvell

began to cry, evidently believing that plaintiff was Hank's daughter. Plaintiff made subsequent visits to the Harvell home and discussed Hank, Bobbie and their relationship. Harvell also gave plaintiff Willard Jett's name. Plaintiff telephoned Willard, who resided in Nashville, and was told that Bobbie had died. Plaintiff had additional telephone conversations with Willard and had meetings with his wife. Later in 1981, plaintiff travelled to Nashville and met other members of the Jett family. In addition, plaintiff went to see the Cooks, a family that cared for plaintiff after the death of Mrs. Stone and prior to her adoption by the Deuprees. In October, 1981, plaintiff travelled to California to gather more information about Bobbie Jett; plaintiff made no attempt to locate Judge Emmett [sic] during this trip.

Plaintiff's investigation also brought her to Drayton Hamilton and another lawyer, Joseph Matranga. Plaintiff went with Hamilton to the Montgomery courthouse to examine records pertaining to the 1967-1968 proceeding. Mr. Deupree retained Matranga to assist with the investigation and Matranga recommended to plaintiff that she solicit Hamilton's assistance in locating pertinent documents. Hamilton stated that he would send material to Matranga. Despite being in contact with Hamilton and seeing a large box of documents in 1981, it was not until 1984 that plaintiff asked Matranga for the documents he had received from Hamilton. In September, 1984, plaintiff met F. Keith Adkinson, an attorney who she subsequently married. On September 12, 1985, plaintiff brought this lawsuit.

Over the past twenty years, other events touching on this case have also transpired. Since January 1, 1974,

Bobbie Jett, Audrey Mae Williams and George Deupree have all died. In addition, Robert Stewart, who drafted the 1952 contract between Hank and Bobbie, and represented Hank and members of his family and the estate, died in the intervening years. Various financial transactions have been completed during the past twenty years. FRMI and Milene paid royalties from the Works to Hank's estate, Williams, Jr. and Audrey Mae Williams. Pursuant to the 1963 agreement, FRMI, Milene, ARO and MOM have all paid royalties to Williams, Jr. based on the Works' renewal term rights. Consequently, Williams, Jr. has reported these royalties on his personal income taxes over the years. After the payment of royalties for the period ending June 30, 1985, ARO and MOM have withheld from Williams, Jr. payments of royalties arising out of the renewal term rights pursuant to an assignment. ARO and MOM, as well as FRMI and Milene, reported on their tax returns those royalty sums not paid to Williams, Jr., Audrey Mae Williams or the estate. In addition, these entities executed licenses and contracts for the exploitation of the Works. When FRMI and Milene were liquidated, the Trustees sold the copyrights that the companies held, warranted their good title and pledged to indemnify the purchaser for any breach of the warranties. Berlin, Chappell and Aberbach have also received royalties based on Berlin's interest in the renewal term rights. Each has reported these royalties on their respective income taxes.

DISCUSSION

The parties in this hotly contested action have thoroughly briefed several areas including the 1976

Copyright Act, the statute of limitations, res judicata and collateral estoppel. However, this entire controversy turns on a basic and time honored principle: "Equity aids the vigilant, not those who slumber on their rights." *Standard Oil Co. of New Mexico v. Standard Oil Co. of California*, 56 F.2d 973, 975 (10th Cir. 1932).

The doctrine of laches serves as a complete bar to a plaintiff's claims if the defendants demonstrate an unreasonable and inexcusable delay by plaintiff in bringing the lawsuit and that the delay resulted in undue prejudice suffered by the defendants. *Dalsis v. Hills*, 424 F. Supp. 784, 788 (W.D.N.Y. 1976). Laches requires a balancing of the equities between the parties. *Potash Co. v. International Minerals & Chemical Corp.*, 213 F.2d 153, 156 (10th Cir. 1954). Therefore, the longer a plaintiff unjustifiably delays in asserting a claim, the lesser the showing of prejudice that will be required of the defendant. *Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 843 (D.C. Cir. 1982). The laches calender clearly does not turn its pages when an individual is justifiably ignorant of the facts giving rise to a claim. *Potash Co.*, 213 F.2d at 155. However, a plaintiff cannot look away from facts that could support a claim, and then later – in this case, many years later – begin to act on those facts and obtain judicial relief. Thus, the clock begins to tick when plaintiff has either actual or constructive notice of facts supporting a cause of action. *Knox v. Milwaukee County Board of Elections Commissioners*, 581 F. Supp. 399, 402 (E.D. Wis. 1984); *Anaconda Co. v. Metric Tool & Die Co.*, 485 F. Supp. 410, 427 (E.D. Pa. 1980). As the Supreme Court noted nearly a century ago,

> [t]he defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts.

Foster v. Mansfield, Coldwater and Lake Michigan Railroad Co., 146 U.S. 88, 99 (1892).

An analysis of plaintiff's conduct demonstrates that she ignored facts as early as 1974 that alerted her to the strong possibility that Hank Williams, Sr. was her biological father. Indeed, a cynic might suggest that plaintiff slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register.

As plaintiff reached twenty-one years of age in January, 1974, she was told, at a minimum, that she could be the biological daughter of one of the most successful country and western singers of all time, Hank Williams, Sr. Soon thereafter, she went to the courthouse in Montgomery to pick up an inheritance of over $3,000 from the estate of a woman who plaintiff could have readily discovered to be Hank's mother. Plaintiff testified that this amount was a significant figure to her when she went to the courthouse at age twenty-one. Despite the fact that she was an adult at the time, plaintiff was accompanied to court by her uncle, a federal marshal, because of the Deuprees' concern that news reporters would be present.

At this point, a reasonable person would clearly be on notice that Hank was suspected to be plaintiff's biological father. In fact, plaintiff herself entertained this thought. After receiving her inheritance, she went to a library and read a biography of Hank, *Sing a Sad Song*, written by Roger Williams. Plaintiff believed that she might have been the subject of a passage describing Hank's illegitimate daughter born in 1953. However, she did nothing to pursue the issue other than to ask the Deuprees certain questions, the subject matter of which she does not remember. Plaintiff, an adult, accepted the statements of the Deuprees that there was no proof of Hank's parentage and that "it had all been decided." Moreover, in 1976 plaintiff learned that Judge Richard Emmett [sic] was a long time Hank Williams buff. Plaintiff permitted the judge to be told of her claim that she might be Hank's illegitimate daughter, but opted not to see him after learning of the judge's desire for a meeting. Indeed, once the judge moved to California, she did not attempt to locate him.

The fact that plaintiff made a calculated decision not to pursue her biological link to Hank during the 1970's is made irrefutable by her deposition testimony. At her deposition on November 5, 1986, plaintiff testified as follows:

> Q. Do you recall ever having the feeling that you did not want anyone to know that you may be the daughter of Hank Wiiliams or believed yourself to be the daughter of Hank Williams?
>
> . . . .
>
> A. Yes, sir.

Shulman Aff., Ex. 2 at 332-33.

Q. Is there any reason to think that it's not true? That those were your feelings between the period of January or December '73 or January '74 through 10/17/79?

A. No, sir.

Id. at 333.

Q. Let's try to put this in prospective [sic]. We've already discussed one time in your life that you didn't want to be linked with Hank Williams; is that right?

A. Yes, sir.

Q. But you don't have a specific knowledge as to the beginning and ending period of that feeling; is that correct?

A. That's correct.

Q. Based upon this testimony and your prior testimony, you had that feeling, did you not, between, at least December '73 and 10/17/79?

. . . .

Q. Based upon this information and your prior testimony?

A. Yes, sir.

Q. It's your statement that you did not want to be identified in any way with Hank Williams between December '71 [sic] and 10/17/79 in any way, correct?

. . . .

A. That's correct.

Id. at 342-43.

As a result of her desire not to be connected with Hank, plaintiff did not attempt to contact any individual who had personal knowledge of plaintiff's parentage. Plaintiff never attempted to contact any relative of either Hank or Bobbie Jett, any of Hank's personal or professional acquaintances, Robert Stewart, the attorney for Hank's estate, author Roger Williams, or any member of the press with knowledge of the 1967-1968 proceedings. For whatever reason, plaintiff did not seriously look into her link with Hank until 1981. It is beyond dispute that plaintiff engaged in an unreasonable and inexcusable delay in bringing her claim.

The Court now turns to whether plaintiff's delay resulted in undue prejudice to the defendants. The types of prejudice that support the defense of laches include " 'the loss of evidence that would support the defendant's position,' " or the defendant having changed his position in a manner that would not have occurred if the plaintiff had acted promptly. *Goodman v. McDonnell Douglas Corp.*, 606 F.2d 800, 808 n.17 (8th Cir. 1979) (quoting *Tobacco Workers International Union Local 317 v. Lorillard Corp.*, 448 F.2d 949, 958 (4th Cir. 1971)), *cert. denied*, 446 U.S. 913 (1980). Prejudice may also be found where a defendant has acted in reliance on the "false sense of security" that he was lulled into by the plaintiff's delay. *See Independent Bankers Assoc. v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam); *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1334 (7th Cir. 1977), *cert. denied*, 434 U.S. 1070 (1978); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

The prejudice suffered by the defendants in this case is profound. Obviously, their first line of defense to plaintiff's claim is that she is not Hank's biological daughter. However, the events leading up to her birth took place in 1952. Thus, even if plaintiff proceeded promptly during the middle to late 1970's, the defendants would confront the obstacles of fading memories and lost proof. This problem is grossly exacerbated by plaintiff's decision to forgo pursuing a connection with Hank's legacy during the 1970's, only to turn around in the 1980's and stake a claim to his estate. As noted earlier, in the years since plaintiff first knew of her possible relationship with Hank, individuals with personal knowledge of relevant events have died. In the forefront of these individuals is Bobbie Jett, who died in California during 1974. Her testimony, either in person or preserved in a deposition, would be most important evidence in the case. Moreover, those individuals who would be available to testify have recollections of the pertinent events that have faded and become less reliable over time. This fact is very clear when one reads the depositions submitted by plaintiff in support of her motion for partial summary judgment.

The defendants have also suffered undue prejudice in that they have entered financial and business transactions during the period of plaintiff's inertia based on the belief that Hank Williams, Jr. was Hank's only child. FRMI, Milene and their trustees made warranties on the copyrights when they sold their interest. ARO and MOM purchased the assets of FRMI and Milene, and the relevant copyrights, before learning of plaintiff's allegations. Moreover, all of the defendants who realized income

derived from the exploitation of the copyrights paid income taxes based on those proceeds. These defendants now face a situation where, if plaintiff prevailed, they would lose the money paid in taxes that was based on a share of the copyright royalties that was above the accurate amount, or face the daunting and costly task of seeking to recover these monies from the federal treasury.

It is important to note that the event which spurred plaintiff to action in December, 1981 was a conversation with Mr. Deupree that lacked any startling new revelation. He merely told her that she could be Hank's daughter, that he regretted certain actions he had taken during the 1960's and that he would assist plaintiff in discovering whether Hank was her biological father. After the conversation, Mr. Deupree sent plaintiff some articles and certain names, but did not provide plaintiff with materials that would not have been available to her had she diligently pursued the issue in the mid-1970's.

Laches is not a doctrine concerned merely with the passage of time. Rather, laches also addresses the changes in conditions and relationships which are intertwined with the lawsuit over that passage of time. *See Galliher v. Cadwell*, 145 U.S. 368, 373 (1892); *Lingenfelter v. Keystone Consolidated Industries, Inc.*, 691 F.2d 339, 340 (7th Cir. 1982) (per curiam). Many transactions have taken place, human memories have faded and several key people have died since plaintiff first knew that Hank Williams, Sr. might be her father. Plaintiff was an adult and made a conscious choice during the 1970's; it would be unfair to the defendants to permit plaintiff to reap the benefits of her recent change of heart.

CONCLUSION

The defendant's motion for summary judgment is granted and the complaint is hereby dismissed. The case is to be removed from the active docket of this Court.

SO ORDERED.

Dated: New York, New York
September 6, 1988

/s/ John F. Keenan
JOHN F. KEENAN
U.S.D.J.

APPENDIX J-2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 732 – August Term, 1988

(Argued February 1, 1989 Decided APR 21, 1989)

Docket No. 88-7860

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE
Circuit Judges

Cathy Yvonne Stone appeals the judgment of September 7, 1988 of the United States District Court for the

Southern District of New York (Keenan, J.) granting defendants' motion for summary judgment on the ground of laches, and denying her cross motion for summary judgment, and dismissing her complaint.

Affirmed.

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Susan H. Green, Rudin & Appel, Beverly Hills, California; Marjorie M. Smith, Coblence Warner Hamilton & Smith, New York, New York, of counsel), *for Plaintiff-Appellant.*

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Jr., Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, *Attorneys for Defendants-Appellees Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc., and Milene Music, Inc.*; Lawrence I. Fox, Stephen K. Rush, Katherine M. Allen, Berger & Steingut, New York, New York, *Attorneys for Defendants-Appellees Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music, Inc.*; Thomas R. Levy, New York, New York, *Attorneys for Defendants-Appellees Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*, all of counsel), *for Defendants-Appellees.*

CARDAMONE, *Circuit Judge:*

Cathy Yvonne Stone brought this action in the United States District Court for the Southern District of New York (Keenan, J.) for her purported share of copyright renewal rights to songs composed by Hank Williams, Sr.,

her natural father. The defendants in this action are Hank Williams, Jr., the son of Hank Williams and stepson of Billie Jean Williams Berlin, who was married to Hank Williams at the time of his death, and a number of music companies or individuals that have obtained an interest in the copyright proceeds of the Williams' songs including: Aberbach Enterprises; Chappell Music Company; Acuff-Rose Opryland, Inc.; Milene-Opryland Music, Inc.; Fred Rose Music, Inc.; Milene Music, Inc.; Roy Acuff; and Wesley H. Rose. The sole issue presented is whether the district court abused its discretion when it granted defendants' motion for summary judgment and dismissed appellant's complaint on the grounds of laches. Even granting to Ms. Stone's situation the fullest stretch of sympathy, her own delay and procrastination in the end bars her suit. The district court's judgment, therefore, is affirmed.

I FACTUAL BACKGROUND

The dispute arises over copyright renewal proceeds for 60 published and copyrighted songs written or performed by country and western singer Hank Williams (Williams, Sr.) who died intestate on January 1, 1953 at the age of 29. During his lifetime the well-known singer and composer wrote such popular hits as "Your Cheatin' Heart" and "Hey Good Lookin' ". We set forth the facts briefly in chronological order.

Appellant Stone was born on January 6, 1953 in Alabama, five days after Williams, Sr. died. While Ms. Stone's biological mother, Bobbie Jett, was pregnant with her in October of 1952, she and Williams, Sr. executed an

agreement under which he acknowledged that he might be the father of appellant, but specifically did not admit paternity. The agreement further provided that Williams, Sr. pay Bobbie Jett for Ms. Stone's support, and placed the infant's custody until age 2 in Lillian Williams Stone, mother of Williams, Sr., who was present at the drafting and the execution of the agreement together with the two principals. Pursuant to its terms, Lillian Stone adopted plaintiff, and Bobbie Jett left for California. Until her death in 1955 Mrs. Stone cared for appellant. At that point, Williams, Sr.'s sister, Irene Smith, reneged on her promise to care for Cathy Stone if anything happened to Lillian Stone. As a result, appellant became a ward of the State of Alabama, and at age three in 1956 a foster child of the Deupree family. The Deuprees adopted her in 1959.

Williams, Sr. had a son, Hank Williams, Jr. The assignment of Hank Williams, Jr.'s copyright interests in his father's music generated litigation in 1967 and 1968 in the Circuit Court of Montgomery County, Alabama. That court appointed a guardian *ad litem*, attorney Drayton Hamilton, to ascertain any unknown potential heirs to the Williams estate and to represent their interests. After investigating, Hamilton concluded that the only such person was appellant Stone. Unbeknownst to Ms. Stone, her adoptive family, the Deuprees, had asked Hamilton to leave her out of the 1967 proceedings, because they thought it unlikely that she would win and were worried that their then 14-year-old daughter would be subjected to embarrassing publicity because of her status as the illegitimate child of a famous country western singer. Nonetheless, Hamilton zealously litigated Ms. Stone's interests, but to no avail. The Alabama court determined

that Hank Williams, Jr. was the sole heir of his father, and further held that appellant, as a natural child who had been adopted by another family, had no rights in any proceeds from the Williams, Sr.'s songs or their renewal rights. In reaching this conclusion, it relied on *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (holding that courts must look to state law to determine child's legal status for inheritance before evaluating the child's renewal rights under the Copyright Act).

After the disruptive first few years of her life, Ms. Stone appears to have enjoyed an ordinary childhood, and developed a closely bonded relationship with the Deuprees, with no knowledge of her natural parents. Then, in late 1973, shortly before appellant's 21st birthday, Mrs. Deupree told her of the rumors regarding the identity of her natural father, but added that everything had been decided against her. This disclosure was necessary because, upon turning age 21, Ms. Stone was entitled to a small inheritance from Williams, Sr.'s mother, Lillian Stone. The Deuprees were concerned that appellant might encounter reporters while claiming the inheritance and wanted to arm her with knowledge. After picking up the inheritance check (about $3,800) at the Mobile County Courthouse, Ms. Stone went to a library and read a biography on Williams, Sr., entitled *Sing a Sad Song*, written by Roger Williams. This book mentioned the possibility that Williams, Sr. had fathered an illegitimate daughter, and the author speculated on the child's entitlement to a renewal interest in his songs. Ms. Stone surmised that she might be that daughter.

In the following years, appellant asked the Deuprees about her background and talked to some attorney acquaintances, but did little else to ascertain her connection to Williams. She recalls that the Deuprees told her that there was nothing more to do. In 1979, she met with personnel from the state agency responsible for adoptions – the Alabama Department of Pensions and Securities – but states that she no longer remembers the substance of the conversation. The record, including appellant's deposition, suggests that her feelings about Williams' parentage were ambivalent.

Her attitude crystallized in 1980 when she received a telephone call from her adoptive father, George Deupree. Evidently alluding to his decision not to pursue Ms. Stone's rights in the 1967-68 lawsuits, Deupree told her that he had undergone a change of heart after seeing Hank Williams, Jr. on a television show. Deupree has since died, but appellant related the conversation in her deposition: "I want to ask you if you would like to find out if Hank Williams is your father. He said think about it. And he said I will help you in any way that I can. And he said I think I was wrong in withholding information from you and not discussing it. And I will do everything I can to help you."

Following this call, Ms. Stone stepped up her efforts to learn about her relationship to Williams, Sr. she looked up newspaper articles about him, and sought out his relatives and those of her natural mother, Bobbie Jett, who had also since died. She met with attorney Hamilton, her former guardian *ad litem*, and discussed with him the 1952 custody and support agreement between Bobbie Jett and Williams, Sr., and obtained the records from the 1967

and 1968 Circuit Court proceedings. But Ms. Stone did not examine those documents until after she met attorney Keith Adkinson (who later became her husband) in 1984.

Appellant filed the original declaratory judgment complaint in this action on September 12, 1985 which, as amended to include all of the above-named defendants, contains two claims. The first claim against all the defendants arises under the Copyright Acts of 1909 and 1976 and seeks a number of declarations, including that Ms. Stone is the natural daughter of Williams, Sr., and as such is entitled to a proportionate share of the renewal rights from his songs. The second claim alleges that certain of the defendants committed a conspiracy to defraud her.

In addition to this federal action, Hank Williams, Jr. and Ms. Stone sued each other in Alabama state court in 1985, each seeking a declaratory judgment on appellant's status vis-a-vis Hank Williams, Sr. That court held that even though Ms. Stone was the natural child of Williams, Sr., she was not his heir under Alabama law. Thus, it gave preclusive effect to the prior 1967 and 1968 Alabama Circuit Court state ruling.

Appellant and defendants moved for summary judgment in the instant action on a number of grounds including statute of limitations and res judicata. The district court, in granting defendants' motion for summary judgment and dismissing her complaint, relied on the doctrine of laches and did not reach the other issues.

II DISCUSSION

Historically laches developed as an equitable defense based on the latin maxim *vigilantibus non dormientibus*

aequitas subvenit (equity aids the vigilant, not those who sleep on their rights). *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam). In contrast to a statute of limitations that provides a time bar within which suit must be instituted, laches asks whether the plaintiff in asserting her rights was guilty of unreasonable delay that prejudiced the defendants. *See, e.g., Gardner v. Panama Railroad Co.*, 342 U.S. 29, 31 (1951); *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651, 655 (2d Cir. 1978). The answers to these questions are to be drawn from the equitable circumstances peculiar to each case.

A ruling on the applicability of laches is overturned only when it can be said to constitute an abuse of discretion. *See Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 30 (1951); *Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 82 (2d Cir. 1981) (per curiam). Because this is an appeal from a motion for summary judgment that dismissed appellant's complaint, we construe the record in the light most favorable to appellant. We therefore presume the correctness of the 1985 holding of the State Court of Alabama that Cathy Stone is the natural daughter of Hank Williams, Sr. *See United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam) (inferences must be drawn in favor of nonmoving party).

We must analyze the reasonableness of delay and the resulting prejudice, *see, e.g., Czaplicki*, 351 U.S. at 533; *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980), to see whether there was a material issue of fact that should have been submitted to a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A. Delay

Although laches promotes many of the same goals as a statute of limitations, the doctrine is more flexible and requires an assessment of the facts of each case – it is the reasonableness of the delay rather than the number of years that elapse which is the focus of inquiry. *See Gardner*, 342 U.S. at 31-32 (the matter should not be determined by reference to mechanical application of statute of limitations; equities of parties must be considered); *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *Wagg v. Herbert*, 215 U.S. 546, 553 (1910). In holding that Ms. Stone unreasonably delayed in bringing this action to have her rights declared, the district court focused on the years 1974-85, beginning with Mrs. Deupree's conversation with appellant regarding the inheritance, and ending with the filing of the complaint that initiated the instant case.

In our view, the delay for the period from 1974 to 1980 may well have been entirely excusable under the circumstances. First, her relationship with the Deuprees is by all indications the paradigm of a successful adoption. Thus, it is not surprising that loyalty and gratitude to Mr. and Mrs. Deupree, whom she considered her real parents, gave her pause at doing anything that might hurt their feelings. For this reason, George Deupree's telephone call to Ms. Stone is significant. Only after he called in 1980 could appellant be sure that investigating her natural parentage would not damage the only family bonds she knew. Second, Ms. Stone's embarrassment at asserting her relationship to Williams, Sr. is also understandable, because his notoriety would have made publicity almost impossible for her to avoid. This is

substantiated by the extensive press coverage of the 1967 and 1968 court proceedings.

Third, only in recent years have courts and the general public come to recognize that children born of unmarried parents should not be penalized by being accorded a status for which they are not to blame. In the 1967 and 1968 proceedings, attorney Hamilton argued on Ms. Stone's behalf that discriminating against illegitimate children violated the Federal Constitution. Unfortunately for appellant, Hamilton was before his time; the case that would remove much of the stigma associated with illegitimacy was then pending before the Supreme Court, but not decided until after appellant's rights had been adjudicated. *See Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (holding unconstitutional state statute that discriminated against illegitimates to discourage births out of wedlock).

But even though Ms. Stone might arguably be excused for the reasons just stated from filing suit until 1980, there is simply no plausible explanation for her delay in filing the instant complaint until September 1985, after five more years had passed. Appellant's filial loyalty is admirable, and one can sympathize with her feelings of embarrassment and trepidation attendant upon widespread personal publicity. But these reasons for delay cannot last forever for purposes of laches. A point arrives when a plaintiff must either assert her rights or lose them. Here Ms. Stone's procrastination and delay, which silently allowed time to slip away, remain as the only reason for her failure [sic] bring suit earlier.

Where plaintiff has not slept on her rights, but has been prevented from asserting them based, for example,

on justified ignorance of the facts constituting a cause of action, personal disability, or because of ongoing settlement negotiations, the delay is reasonable and the equitable defense of laches will not bar an action. *See* Note, *Laches in Federal Substantive Law: Relation to Statutes of Limitation*, 56 B. U. L. Rev. 940, 972 (1976). There is no such reasonable excuse, or any issue of fact presented in the instant case that would permit a jury to excuse appellant's delay for the five years beginning in 1980 and ending in September 1985.

B. Prejudice

Laches is not imposed as a bar to suit simply because a plaintiff's delay is found unexcused; it must also be determined whether the defendants have been prejudiced as a result of that delay. *See Saratoga Vichy Spring Co.*, 625 F.2d at 1040. Although an evaluation of prejudice is another subject of focus in laches analysis, it is integrally related to the inquiry regarding delay. Where there is no excuse for delay, as here, defendants need show little prejudice; a weak excuse for delay may, on the other hand, suffice to defeat a laches defense if no prejudice has been shown. *See Larios v. Victory Carriers, Inc.*, 316 F.2d 63, 67 (2d Cir. 1963). Defendants may be prejudiced in several different ways. *See Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 844 (D.C. Cir. 1982). One form of prejudice is the decreased ability of the defendants to vindicate themselves that results from the death of witnesses or on account of fading memories or stale evidence. Another type of prejudice operates on the principle that it would be inequitable in light of some change in defendant's position to permit plaintiff's claim

to be enforced *See Holmberg*, 327 U.S. at 396. Defendants here were prejudiced in both ways.

As the district court noted, some of the key people having knowledge of the events preceding Ms. Stone's birth have died since 1974 – George Deupree, Bobbie Jett and Billie Jean Williams Berlin [sic]. All of their deaths are not equally prejudicial. For example, Bobbie Jett died in 1974, so absence of her testimony cannot be found to prejudice defendants because she would not have been alive to testify even if appellant had filed suit immediately. Nevertheless, the circumstances giving rise to this appeal have already spanned over two decades and the additional five years of Ms. Stone's unexcused delay doubtless would hamper the defense further – appellant's deposition reveals that even her memory has faded significantly in the interim. *See Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 83 (2d Cir. 1981). We conclude that the defendants were prejudiced to some degree by evidence that was lost by death or weakened during the delay. Because the defendants were injured in other ways by the delay, we need not hold that a finding of this kind of prejudice is alone sufficient to support the laches defense.

Prejudice may also be found if, during the period of delay, the circumstances or relationships between the parties have changed so that it would be unfair to let the suit go forward. The defendants have entered into numerous transactions involving Williams, Sr.'s songs. Ms. Stone responds that these transactions need not be unravelled – she could simply share in the profits. But that argument ignores the fact that the transactions were premised on the apparent certainty of the ownership of the songs' renewal rights – attributable to appellant's delay. This

procrastination prejudiced defendants by lulling them into a false sense of security that the renewal rights were as they appeared and that she would not contest the 1967 and 1968 court ruling. *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d at 488 (D.C.Cir. 1980); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

We cannot be sure that defendants' [sic] would have struck the bargains they did had they anticipated the diminution in their profits that Ms. Stone seeks. This result is logically not altered by whether the defendants made actual expenditures or whether they simply incurred the opportunity costs implicated in foregoing other ventures. As Judge Learned Hand wrote as a district court judge in a copyright case in which the plaintiff delayed for 16 years before filing suit, it would be unfair for a plaintiff "to stand inactive while the proposed infringer spends large sums of money in its exploitation, and to intervene only when his speculation has proved a success. Delay under such circumstances allows the owner to speculate without risk with the other's money; he cannot possibly lose, and he may win." *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916); *see also Independent Bankers*, 627 F.2d at 488. We therefore agree with the district court that the change in relationships and circumstances that occurred while Ms. Stone delayed would prejudice the defendants if the case were allowed to proceed at this late date.

Finally, we note that the underlying value of the laches doctrine, as with statutes of limitations, is that of repose. Even assuming that appellant's claims are meritorious, the availability of the laches defense represents a

conclusion that the societal interest in a correct decision can be outweighed by the disruption its tardy filing would cause. Thus, courts, parties and witnesses "ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." *See Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 428 (1965).

III CONCLUSION

We hold therefore that Ms. Stone's delay in filing suit until September 1985 was unexcused and has prejudiced defendants. Accordingly, the order of the district court is affirmed.

APPENDIX J-3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE	)	88-7860
v	)	**NOTICE OF MOTION** (filed Aug. 1, 1989)
HANK WILLIAMS, JR., et al.	)	*state type of motion* for RECALL OF MANDATE AND ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING AND REMAINING IN BANC
Use short title	)	

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

MILTON A. RUDIN, ESQ.*
RUDIN and APPEL, a Professional Corporation
9601 Wilshire Boulevard, Suite 800
Beverly Hills, California 90210
(213) 274-4844

Has consent of opposing counsel:

A. been sought? [ ] Yes [X] No

B. been obtained? [ ] Yes [X] No

Has service been effected? [X] Yes [ ] No

Is oral argument desired? [ ] Yes [X] No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? [X] Yes [ ] No

B. by firm date of argument notice? [X] Yes [ ] No

C. If Yes, enter date: February 1, 1989, Decision; Judge or agency whose order is being appealed: April 21, 1989

Honorable John F. Keenan, S.D.N.Y.

OPPOSING COUNSEL: *(Name, address and tel. no of law firm and of attorney in charge of case)*

ALAN L. SHULMAN, ESQ. **
Silverman, Shulman & Slotnick, P.C.
136 East 57th Street
New York, New York 10022
(212) 758-2020

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

* Coblence, Warner, Hamilton & Smith
1370 Avenue of the Americas
New York, N.Y. 10019 (212) 957-9700

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued on June 5, 1989, be recalled in order that Appellant be permitted to file a Petition for Rehearing and Rehearing

In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: *(Signature of attorney)* Appearing for: *(Name of party)*

/s/ Milton A. Rudin — Cathy Yvonne Stone

Appellant or Petitioner:
[X] Plaintiff

Signed name must be printed beneath — Date

Milton A. Rudin — July 31, 1989

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is granted and the mandate of this Court issued June 5, 1989 is recalled. Appellant should file a brief not to exceed 10 pages within 14 days of the date of this order and the appellee may file an opposing brief not to exceed 10 pages within 7 days thereafter. The issue to be briefed should be confined to the issue of how the Alabama Court's finding of fraud affects our determination regarding Stone's laches.

No oral argument is granted.

Ellsworth Van Graafeiland
Richard J. Cardamone
Lawrence W. Pierce
Circuit Judge

Date

** Lawrence I. Fox, Esq.
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New York, New York 10017
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(filed Aug 24, 1989)

APPENDIX J-4

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASINGTON, D.C. 20543

November 6, 1989

Mr. Lawrence I. Fox
Berger & Steingut
600 Madison Avenue
New York, NY 10022

Re: Cathy Yvonne Stone,
v. Hank Williams, Jr., et al.
No. 89-295

Dear Mr. Fox:

The Court today entered the following order in the above entitled case:

The motion of petitioner to defer consideration of the petition for certiorari is denied. The petition for a writ of cert orari is denied.

Very truly yours,

Joseph F. Spaniel, Jr., Clerk

APPENDIX J-5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OPINION ON PETITION
FOR REHEARING

No. 732 – August Term 1988
(Argued February 1, 1989
Decided April 21, 1989)
(Petition for Rehearing Filed
September 7, 1989
Decided Dec. 5, 1989)

Docket No. 88-7860

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE AND ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE,
Circuit Judges

Petition for rehearing under Fed. R. App. P. 40 made by Cathy Yvonne Stone of this panel's decision in *Stone v. Williams*, 873 F.2d 620 (2d Cir.), *cert. denied*, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295), that affirmed the grant of summary judgment dismissing appellant's complaint on the grounds of laches in the United States District Court for the Southern District of New York (Keenan, J.).

Petition for rehearing granted. Prior opinion vacated and case remanded to the district court.

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Rudin & Appel, Beverly Hills, California; Kenneth E. Warner, Coblence Warner Hamilton & Smith, New York, New York, of counsel), *filed a brief for Plaintiff-Appellant.*

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, of counsel), *filed a brief for Defendants-Appellees, Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.*

THOMAS R. LEVY, New York, New York, *filed a brief for Defendants-Appellees, Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*

LAWRENCE I. FOX, New York, New York, (Stephen K. Rush, Dianna Baker Shew, Berger & Steingut, of counsel), *filed a brief for Defendants-Appellees, Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music Inc.*

CARDAMONE, *Circuit Judge:*

Pursuant to an order entered August 24, 1989, granting her leave to file a petition for rehearing, Cathy Yvonne Stone petitions this panel under Fed. R. App. P. 40 for a rehearing. She had appealed from a judgment of the United States District Court for the Southern District of New York (Keenan, J.) granting summary judgment to defendant in an action plaintiff brought seeking her purported share of copyright renewal rights to songs composed by Hank Williams, Sr., her natural father. Defendants are the son and common-law wife of the late singer, and several individuals and corporations that are assignees of the copyrights to Hank Williams' songs. Judge Keenan ruled that plaintiff's claim was barred by laches. We affirm the district court in an opinion dated April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir.), *cert. denied*, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295).

The petition for rehearing of the appeal is granted. The April 21st opinion and judgment of this Court are vacated, and the matter is remanded to the district court for further proceedings.

I

At the time of plaintiff's appeal before us, she also had pending an appeal to the Supreme Court of Alabama where she sought to have her father's estate opened and to obtain her proportionate share of that estate. The defendants on that appeal included Irene Smith (Hank Williams' sister and the administratrix of his estate at the time plaintiff's claim to the estate was originally decided)

and Robert Stewart (Williams' attorney). In order to achieve that ultimate relief, Ms. Stone necessarily also petitioned the Alabama Supreme Court to set aside two orders entered in 1967 and 1968 by the Montgomery Circuit Court which, though acknowledging that Hank Williams was her natural father, declared that she was not an heir to his estate.

On July 5, 1989, the Supreme Court of Alabama reversed the trial court's award of summary judgment to defendants finding that they had intentionally, willfully and fraudulently concealed plaintiff's identity, existence, claim and rights as a natural child of Hank Williams, Sr. The court determined that defendants' fraud, along with other errors of law, presented sufficient grounds to set aside the 1967 and 1968 decrees that declared that plaintiff was not an heir to Williams' estate. This fraud, the court continued, excused plaintiff's delay in asserting her claim, and it held therefore that plaintiff had asserted her rights timely. It further found substantial evidence in the record that could indicate to a factfinder that defendants fraudulently conspired to keep certain facts relating to plaintiff's existence, identity and potential claim concealed from the courts of Alabama.

A.

A brief review of some of the factual background is necessary to understand the present posture of the matter now before us. When the famous country and western singer Hank Williams died (a few days before plaintiff was born) his mother, Lillian Stone, legally adopted

plaintiff. Hank Williams's sister, Irene Smith, had promised to care for plaintiff in the event that Lillian Stone was unable to. After Lillian Stone's death, Smith reneged on her promise, saying she wanted to avoid the "publicity and gossip" associated with the baby, and that it would be in the child's best interests to be put up anonymously for adoption. But a letter written earlier by Smith to attorney Stewart in 1954 suggests that Smith may have been motivated by more selfish reasons. Pertinent parts of that letter state:

> The idea you have about making Billy [Hank Williams' reputed widow] a legal wife isn't bad at all but I fear that once you accept her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.
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> * * *
>
> Thanks for sending the royalties check. It sure came in handy. . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. . . . Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. . . .

Additional correspondence between attorney Stewart and legal counsel for Wesley Rose, one of the copyright assignees, reveals Stewart's early knowledge of plaintiff's claim to the copyright renewals. Relevant language in a letter from Rose's counsel to Stewart, dated February 28, 1962 stated:

> There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals. . . .

Stewart's letter in response, dated July 5, 1962, noted:

> Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, we may be faced with a difficult problem, and certainly one we would not want to litigate. . . .

Stewart then listed several alternative ways that plaintiff's rights to the renewals might be cut off.

In 1967 Audrey Williams, Hank Williams' former wife (now deceased), petitioned for final settlement of the estate on behalf of her son Hank Williams, Jr. Attorney Stewart was called to testify by a guardian ad litem representing plaintiff. Although he produced a child support and custody agreement executed by Williams – which provided that plaintiff would be cared for by Williams – he did not divulge to the court information he had respecting other matters relating to plaintiff's claim to an interest in her father's estate.

In 1967 and 1968 the Montgomery County Circuit Court accordingly ruled that plaintiff was not an heir to

Williams' estate. Despite this ruling, when in 1969 Stewart became administrator of Williams' estate (succeeding defendant Smith), he began setting aside a share of the estate for plaintiff's benefit. At one time he wrote to Williams, Jr.'s attorney: "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." When Williams' estate was closed in August 1975, the portion set aside for plaintiff was distributed along with the other estate assets.

B.

Based upon this evidence the Supreme Court of Alabama concluded there was sufficient evidence of fraud perpetrated against Cathy Stone to make disposition of her case by summary judgment on that issue inappropriate. The court also examined whether plaintiff's claim should be barred by laches, and ruled that plaintiff's delay was excusable. The Alabama Supreme Court reasoned that she was permanently removed at age three from the city of her birth to another city for the express purpose of making it highly unlikely that she would discover her father's identity; all public records that might have revealed her paternity were ordered sealed; plaintiff had no idea of her relationship to Williams until 1974, and even then when the matter was first presented to her it was presented as mere speculation; the findings of the Alabama trial court in 1967 and 1968 (declaring that plaintiff was not an heir) were tainted by intentional fraud on the part of the administratrix and attorney of Williams' estate; and finally, plaintiff made prompt demand for her share of her father's estate as soon as she

received the sealed records containing firm evidence of her paternity.

II

Although not bound by the decision of the Alabama Supreme Court – its decision involved different parties and applicable law – we believe that its finding of fraud requires a reappraisal of our decision made before that court ruled. *Cf. Bott v. Four Star Corp.*, 807 F.2d 1567, 1576 (Fed. Cir. 1986) (defendant's egregious conduct may defeat its laches defense); *Johanna Farms, Inc. v. Citrus Bowl, Inc.*, 468 F. Supp. 866, 874 (E.D.N.Y. 1978) ("one who seeks Equity's assistance must stand before the court with clean hands"). More particularly, the finding of fraud warrants a reassessment of the prejudice to defendants that may result should we permit plaintiff's claim to proceed on the merits. *See, e.g., Czaplicki v. the Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980). We recognize that the principal defendants in the action before us are Hank Williams, Jr. and Billie Jean Williams Berlin, Hank Williams, Sr.'s common-law wife, not the administratrix and attorney of Williams' estate, as in the Alabama action. However, recited evidence in the Alabama court makes clear that the present defendants were aware of plaintiff's rights to the copyright renewals long before plaintiff. Irene Smith, who was instrumental in concealing from plaintiff evidence of who her father was, acted as Hank Williams, Jr.'s guardian during the 1967-68 proceedings. Similarly, Smith, as administratrix, and Stewart, as attorney, of Hank Williams' estate, conspired to conceal from Cathy Stone her potential rights, and took pains to cut off

those rights. These actions of his guardian benefited Hank Williams, Jr. Hank Williams, Jr.'s counsel was further advised by Stewart that a portion of the estate income was being withheld for appellant. Williams, Jr. never disavowed Stewart's actions, or mentioned any of these facts in prior court proceedings in Alabama in 1985 or in the district court proceeding we earlier reviewed and to which he and plaintiff were parties.

The prejudice to defendants we identified in our prior opinion, 873 F.2d at 625, would not have existed but for the failure of the present defendants to reveal the facts of which they had knowledge. Defendants could have sought a court declaration of their rights vis-a-vis plaintiff. Instead they chose to remain silent. They should not now be allowed to claim that they are prejudiced by plaintiff's present assertion of her rights when they were aware of them all along.

Consequently, in reassessing the equitable circumstances peculiar to this case, the equities fall on plaintiff's side. The present litigation is a contest, after all, between Hank Williams' heirs over copyright renewal rights. To allow defendants to bar plaintiff from claiming her rights when the availability of the laches defense was obtained by them in such an unworthy manner would not only grant defendants a windfall in this suit to which they are not entitled, but would also encourage a party to deliberately mislead a court. Courts of equity exist to relieve a party from the defense of laches under such circumstances. *See Holmberg v. Armbrecht*, 327 U.S. 392, 396-97 (1946).

Consequently, the evidence of fraud, which the Alabama Supreme Court found persuasive, makes summary judgment dismissing plaintiff's claim on the grounds of laches inappropriate. The figure representing justice is blindfolded so that the scales are held even, but justice is not blind to reality. Plaintiff therefore should have her day in court and an opportunity to have a jury determine the merits of her claim.

III

Plaintiff also requests a rehearing *en banc*. She claims an *en banc* hearing is merited because the dismissal of her claim on the ground of laches contradicts copyright law established by the Supreme Court in *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960) and *Menendez v. Holt*, 128 U.S. 514 (1888), and by us in *New Era Publications International v. Henry Holt & Co.*, 873 F.2d 576 (2d Cir. 1989). Since the dismissal of the case on laches grounds which this panel originally affirmed is now reversed, we need not decide this question.

IV

The petition for rehearing is granted. The previous opinion of this Court of April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), is vacated, and replaced by the present opinion which now reverses the dismissal of plaintiff's complaint by the district court on the ground of laches. The matter is remanded to the district court for further proceedings on the merits.

APPENDIX J-6
STATEMENT OF RELATED PROCEEDINGS

In addition to the instant action there is currently pending before the United States District Court for the Southern District of New York an action styled *Cathy Yvonne Stone v. Hank Williams, Jr., et al.*, 85 Civ. 7133 (JFK), which was filed by Respondent two (2) days after the instant action on September 12, 1985. In *Stone v. Williams* Respondent is seeking (a) a declaratory judgment that she is the natural daughter of Hank Sr. and the owner of a proportionate interest in the renewal term of copyright in musical compositions written by Hank Sr. and (b) damages and exemplary damages against certain defendants other than Hank Jr. for conspiracy to defraud and a breach of fiduciary duty. Although alleged against other parties, the second claim for relief is based upon the same facts which form the basis for the third party action in the instant case.

Hank Jr. and the other defendants in *Stone v. Williams* submitted a joint Motion for Summary Judgment which was granted by the District Court. Respondent's claims were dismissed by the District Court in their entirety based upon the doctrine of laches.

Respondent perfected an appeal of the District Court's decision to the United States Court of Appeals for the Second Circuit. Pursuant to an Opinion dated April 21, 1989, the Second Circuit affirmed the judgment of the District Court.

Respondent submitted a Petition for Rehearing to the Second Circuit which was denied. Following the issuance of the Alabama Supreme Court's Opinion of July 5, 1989

and based thereon, Respondent filed a Motion for Recall of Mandate and Order Granting Leave to File Petition for Rehearing and Rehearing in Banc. The motion was granted. Subsequent to her submission of the second Petition for Rehearing, this Court denied Respondent's previously submitted Petition for Writ of Certiorari with respect to the Court of Appeals April 21, 1989 decision.

On December 5, 1989, the Second Circuit vacated its prior opinion and reversed the District Court stating that the Alabama Supreme Court decision caused it to "reappraise" its decision. Without regard for the findings of fact of the District Court (which had all of the evidence cited by the Alabama Supreme Court before it), the Second Circuit adopted the "facts" found by the Alabama Supreme Court to justify the vacating of its prior decision.

Hank Jr. and the other defendants in *Stone v. Williams* are submitting a Petition for Writ of Certiorari seeking review by this Court of the December 5, 1989 opinion of the Court of Appeals.

APPENDIX K-1

Estate of Rudder, 78 Ill.App.3d 517, 397 N.E.2d 556 (1979). This case involved a closed estate. The narrow decision was that neither *Trimble* nor an amended state Probate Act should be applied retroactively to a closed estate. The court cited *Chevron* and purported to apply its retroactivity tests. However, the court also cited approvingly several other state court decisions that had applied tests like that later invalidated in *Reed.*

Herndon v. Herndon, 388 So.2d 463 (La. App. 1980). This apparently was a collateral attack involving a closed estate. The court held, as an alternative basis for its decision, that a state appellate decision holding Louisiana's intestacy laws unconstitutional under *Trimble,* even if affirmed by the state supreme court, would not be applied retroactively.

Frakes v. Hunt, 226 Ark. 171, 583 S.W.2d 497, *cert. denied,* 444 U.S. 942 (1979). This case involved an attack on the estate of a decedent who had died five years before *Trimble,* but whose estate had never been administered. Without citing any of this Court's retroactivity decisions, the court held broadly that *Trimble* would not be applied retroactively. The dissent argued in favor of retroactive application, partly on the basis of the tests set forth in *Linkletter v. Walker,* 381 U.S. 618 (1965), partly based on the fact that the estate had not been administered, and partly on the basis of a presumption that this Court's decisions should be applied retroactively unless this Court has directed otherwise.

Marshall v. Marshall, 670 S.W.2d 213 (Tenn. 1984). It is unclear whether this case involved an open or a closed estate. The decision held, based on the reasoning of

secondary authorities that discussed this Court's retroactivity decisions, that the principles of *Trimble* would be applied retroactively unless the heirs who acquired assets of the estate under prior law had relied to their detriment on such prior law. By stressing reliance, *Marshall* seems to apply a case-by-case test that ignores the interest in finality of probate orders.

Paschall v. Smiley, 530 S.W.2d 18 (Miss. 1988). This case involved an attack on a closed estate, pursuant to a state statute that permitted such actions, subject to stringent procedural and other safeguards. The decision reversed a lower court decision holding that the statute unconstitutionally divested rights of heirs as determined under pre-*Trimble* law, on the ground that the lower court had reached the constitutional issue prematurely.

Henson v. Jarman, 758 S.W.2d 368 (Tex. Civ. App. 1988). This decision followed *Reed* under analogous facts. Without engaging in any retroactivity analysis, the court stated in *dicta* that new law would not be applied retroactively in cases involving closed estates.

Pendleton v. Pendleton, 560 S.W.2d 538 (Ky. 1978) (on remand for reconsideration in light of *Trimble*). This decision withdrew the Kentucky Supreme Court's prior mandate, and held that *Trimble* would be applied retroactively to cases in which the constitutional questions were being litigated on the date *Trimble* was decided, but not otherwise. The decision cited no retroactivity decisions of this Court, and ignored the fact that the case arose as a collateral attack on a closed estate. The time of filing test established by this decision is no longer valid in light of *Reed*. The fact that a decision on direct remand from this

Court reached a result that this Court later invalidated suggests that lower courts desperately need clear guidance on retroactivity issues.

Rekowski v. Cucca, 542 A.2d 664 (R.I. 1988). This case followed *Reed* in holding that a new law would be applied in an action involving an open estate. It did not discuss retroactivity decisions of this Court, but it implied that the result would have been different if the estate had been closed.

Powers v. Wilkinson, 399 Mass. 650, 506 N.E.2d 842 (Mass. 1987). In this analogous case the highest court in Massachusetts reversed a prior state law rule of construction by holding that, in the absence of a contrary expression of intent, the term "issue" in a trust instrument would be deemed to include illegitimates. Citing the reliance by grantors of trusts and their attorneys on the prior rule of construction, the court held that the new rule would be applied only to trusts executed after the date the decision was rendered.

Kirchberg v. Feenstra, 609 F.2d 727 (5th Cir. 1979), *aff'd*, 450 U.S. 455 (1981). In this case, which involved gender discrimination, the court held invalid a mortgage that had been executed by the husband under a state law allowing the husband, but not the wife, to encumber community property without joinder of the other spouse. Citing *Chevron* and other retroactivity decisions of this Court, the Fifth Circuit held that the decision would not affect mortgages executed before the date the decision was rendered. On appeal, this Court affirmed, without

addressing the retroactivity issue. Two Justices, concurring, stressed the non-retroactive nature of the decision. 450 U.S. at 463 (Rehnquist and Stewart, JJ, concurring).

While other lower courts have ignored or applied inconsistently the retroactivity tests of *Chevron*, Alabama's decisions best illustrate the confusion that prevails regarding retroactive application of new law. In *Cotten v. Terry*, 495 So. 2d 1077 (1986), that state's supreme court allowed an illegitimate to share in an estate, where the decedent had died eleven years before a collateral attack was filed, but where the estate had never been formally administered.

Relying in part on its own decision in *Cotten v. Terry*, the Alabama Supreme Court in the case at bar determined that it was bound to apply retroactively, to a long-closed estate, the principles established in *Trimble*. The court noted in passing the interests in finality of judgments and orderly disposition of estates, but made no effort to consider those interests in light of the other factors mandated under *Chevron*. Instead, the Alabama court limited relief, which it arbitrarily awarded from the date the instant claim was made. The case at bar thus highlights the uncertainty with which lower courts have approached retroactivity issues and the untoward consequences of that uncertainty in an area of the law in which this Court has acknowledged an important state interest.

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